

# Effective Assistance of Counsel: Implementing the Louisiana Public Defender Act of 2007

## Evaluation of Public Defense Services and Operations in Louisiana's 15th Judicial District Indigent Defense System



June 2010

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Produced on behalf of:  
Louisiana Public Defender Board

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National Legal Aid & Defender Association



## Executive Summary

The Louisiana legislature passed the Louisiana Public Defender Act of 2007 (“Act 307”) on an overwhelmingly bipartisan vote with the expressed intent of ensuring that “all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding” and “that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.” Act 307 has yet to take root in the 15th Judicial District (JDC).

The indigent defense office (IDO) of the 15th JDC operates with little coordinated management. Attorneys are paid a single flat fee to take an unlimited number of cases, creating a financial conflict between the rights of the defendant to competent counsel and the attorney’s take home pay. Indigent clients facing misdemeanor or traffic offenses carrying jail time may very well not receive counsel at all, despite the state and federal constitutional mandates that they be afforded an attorney. Defendants are likely to be represented by as many as three or four different attorneys during the course of a single case – typically known as “horizontal representation” and universally decried by all national standards and Act 307.

Many of the defense attorneys in the IDO are very experienced, talented and highly regarded attorneys. Still, the attorneys carry excessive caseloads as defined by national standards, *before* factoring in their private caseload. The large caseloads carried by these attorneys prevent them from pursuing meaningful communication with their indigent clients. As a result, the lawyers end up meeting with their clients at the courthouse on dates when cases are set for hearing or trial. An inaptly named “open file discovery” policy has the adverse affect of encouraging attorneys never to file motions. Access to investigators – though changing – has been virtually non-existent during the tenure of the current district defender. New attorneys are thrown into court with little training and no structure is in place to assess attorney performance. Indigent clients found or pled guilty are regularly assessed an excessively large amount of fees to be paid as a condition of probation, including the cost of their inadequate defense. Failure to pay such fees will result in the revocation of their probation and jail time to be served at further taxpayers’ expense.

The National Legal Aid & Defender Association (NLADA) reached these conclusions after the Louisiana Public Defender Board (LPDB) contracted NLADA to conduct a management evaluation of the 15th JDC Indigent Defender Office, pursuant to LPDB’s duties under Act 307 to review, monitor, and assess the performance of all attorneys providing counsel for indigent defendants. As set out in Chapter I (pages 1 - 5), LPDB requested NLADA specifically to: evaluate the organizational structure, practices, and policies; eval-

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uate the caseloads, workloads and workflow impediments; and identify the availability and use of investigators.

One of the principle reasons the legislative intent of Act 307 has not reached the 15th JDC is some lingering confusion about the status of the district defenders vis-à-vis the LPDB. Prior to 2007, every local indigent defense system was fully autonomous and the chief public defender of each system was in charge, reporting only to their judicially-appointed local indigent defender board. With the disbanding of the local boards through the passage of Act 307, district defenders were to become either employees of LPDB or contractors with LPDB. Yet there is no signed contract between the LPDB and the current district defender. Instead, there is a document that purports to be a contract signed by the district defender in his management capacity and the district defender in his attorney capacity, hiring himself to serve as district defender and to provide felony representation. District defenders should not be signing as both parties to a contract under which they will then determine their own annual salary.

The 15th IDO district defender has ceded to the office administrator whatever limited supervision is being performed. Strikingly, the district defender said that he was not aware of any performance standards or policies issued by the LPDB, even though the *Trial Court Performance Standards* had been published in April 2009, a full five months prior to the site visit.

It is simply impossible for any attorney to supervise the work of 49 other attorneys spread across three parishes while working part time, even if that attorney does not carry a full public caseload. Whether supervision criteria is developed at the state level or by local service providers or in combination is less relevant at this point than having someone with the time, tools and training to supervise and evaluate every single attorney and support staff in the jurisdiction.

Chapter II (pages 6 - 51) details the evidence to support the conclusion that the 15th IDO fails to appropriately represent clients. For example, trial defense attorneys are not presently being appointed to represent indigent defendants (whether in or out of custody) until after the initiation of prosecution by the district attorney through the filing of a bill of information or securing an indictment. The IDO instead designates what could be referred to as a “placeholder attorney” (the pre-indictment/bond reduction attorney). This is tantamount to not appointing any attorney at all, as the placeholder attorney does not meet with the client, does not begin investigation of the case, does not negotiate with the prosecutor for dismissal of or plea agreement in the case, and does not in short serve as *counsel* to the client in the defense of the charge against her. Then, on the back end of felony cases, the IDO does not provide continuity of trial counsel to represent defendants in any ensuing probation revocation hearing.

This was most clearly seen in Acadia Parish. Clients there are given a memo that informs the individual that s/he will be represented by “an attorney with the Pre-Indictment Division” until such time as a bill of information is filed by the District Attorney’s office. This memo also tells the IDO clients that they are responsible for producing witnesses at any future bond reduction hearing, and that if no witnesses present on their behalf *there will be no bond reduction hearing*. In other words, the pre-indictment attorney will take no steps whatsoever to locate, identify, and secure the appearance of witnesses on behalf of the client in order to reduce their bond. Throughout the 15th Judicial District, clients will not actually meet the pre-indictment attorney until the date on which their bond reduction hearing is set to occur, if then.

At the time of the site team evaluation, the pre-indictment attorney in Lafayette was serving his first day on the job as an IDO attorney. He did not meet or talk with any of the clients he was representing that morning. At arraignments, he: entered a plea of not guilty on behalf of the client; waived formal reading of the charges against the client; and requested 30 days within which the eventually appointed defense attorney could file any necessary pre-trial motions. As everyone throughout the system informed the NLADA site team, there is no real representation provided to any indigent defendant until after institution of prosecution and arraignment, because the real trial lawyer is not appointed until after arraignment on the charge. Several judges expressed concern, noting that important defenses may be lost as a result of the delay in the defense attorney beginning preparation of the defense case. One judge observed that, while a retained attorney will begin investigating a case and negotiating for dismissal or a plea early on and before institution of prosecution, all of this time is lost for an indigent client because there is no investigation or negotiation until after arraignment.

Once a defendant receives a trial lawyer, that attorney has far too many cases and not enough training to handle the job. Attorneys in the 15th IDO work above nationally recognized caseload standards. Of the 44 IDO attorneys who were assigned cases throughout the 2008-2009 fiscal year, 21 of those attorneys were carrying IDO caseloads that are in excess of national standards, *before* factoring in their private retained client caseloads. Just looking at the self-reported numbers for cases assigned during the 2008-2009 fiscal year shows that 44 percent of felony attorneys (11 of 25) significantly exceeded the national standard for felony cases handled (150 cases). But the situation is much worse. These are simply the number of new cases assigned during the 12-month fiscal year. Surely, a certain number of cases assigned during the previous year were still open and rolled over into this time period. And, though some of the cases opened during this 12-month fiscal year were disposed in the same fiscal year, some would have still been open

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during the following year. National standards refer to any case handled in a given year (number of cases open at the start of a year plus new assignments). Again, all of this excessive workload is *before private cases are factored in*.

One of the ways case overload manifests itself is when even experienced defense attorneys fail to raise appropriate issues. A prosecutor in Acadia Parish related that he had been involved over time in six capital murder prosecutions of juveniles. Despite the youth of the charged offenders, caselaw providing that the mentally handicapped cannot be subjected to the death penalty, and the various guilt and sentencing factors that implicate mental capacity/health in particular in cases of juveniles, the public defense attorney had never raised any issue of competency in any of those cases.

Many defendants simply go unrepresented in the 15th JDC, despite the Sixth Amendment mandate that counsel be appointed for any person being prosecuted with the potential loss of liberty who cannot afford to hire their own attorney. The Rayne City Court judge and the Crowley City Court judge both advised that they do not appoint counsel in misdemeanor cases; instead, an IDO attorney is present and available merely to answer questions, should a defendant have any. In Abbeville City Court, the judge will only appoint an attorney in a case where there is mandatory jail time or when repeat convictions can result in enhanced penalties (such as theft, possession of marijuana or drug paraphernalia, DUI, telephone harassment, simple battery on a police officer, stalking, and domestic abuse). In all other cases including those that carry the possibility of jail time as a sentence, the judge will not appoint counsel.

Overcoming the hurdles that prevent adequate implementation of the legislative intent of Act 307 will necessarily involve a concerted effort by advocates at both the state and local level. In making recommendations (Chapter III, pages 52 - 59), NLADA notes that contracting with attorneys to provide indigent defense services is a perfectly acceptable method of providing those services, both under national standards and under Act 307. But a flat fee contracting system that pits the financial interests of the attorneys against the interests of their clients, and in which insufficient data is gathered to provide accountability, is not acceptable under either. NLADA urges the LPDB to promulgate all contracts between the LPDB and district defenders as well as between the LPDB and the indigent defense attorneys within each judicial district, and to promulgate policies regarding the effectuation of those contracts.

NLADA believes that LPDB has the statutory authority to make the following five changes without additional legislative direction:

1. *LPDB should promulgate, adopt and enforce contracting regulations*
2. *LPDB should adopt and implement attorney qualification & training standards*

3. *LPDB should adopt a policy requiring district defenders in populous jurisdictions to be full-time and begin implementing regional director system set out in Act 307*
4. *LPDB should promulgate policies and provide training regarding the proper use of investigators*
5. *LPDB should promulgate and require the implementation of policy directing that vertical representation be provided, whenever possible, in the 15th JDC and throughout Louisiana's public defense system, with prompt appointment occurring in accordance with the mandates of Rothgery v. Gillespie County, 128 S.Ct. 2578 (2008), and appointment of counsel occurring on behalf of all indigent defendants facing loss of liberty as a potential sentence.*

In conclusion, NLADA applauds the Louisiana legislature for their leadership in constructing a system that can root out inefficient and ineffective use of taxpayer resources. But Act 307 is not an end in and of itself. Its passage simply demarcated a new phase on the continuum toward making *Gideon's* promise a reality. Though implementation of Act 307 has been arduous at times, NLADA believes that these relatively few recommendations, if implemented, will significantly meet the legislative intent of the Louisiana Public Defender Act of 2007.

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# Introduction



The Louisiana legislature passed the Louisiana Public Defender Act of 2007 (hereinafter “Act 307”) on an overwhelmingly bipartisan vote with the expressed intent of ensuring that “all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding,”<sup>1</sup> and “that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.”<sup>2</sup> This wrought a dramatic change in the manner in which public defense services in Louisiana are provided.<sup>3</sup>

Before Act 307, each of the 41 judicial districts operated their own public defense system under the authority of a local three- to seven-member indigent defender board selected by the judges of the district court.<sup>4</sup> These local boards were responsible for choosing the method of providing counsel for indigents – appointment by the court from a list of volunteer attorneys; contracting with one or more attorneys; employing a chief public defender and assistants; or a combination of these three methods – and securing the attorneys to carry out the chosen method.<sup>5</sup>

All funding for the operation of each of the judicial district public defense systems was managed entirely at the local level through a judicial district indigent defender fund.<sup>6</sup> The source of funds was primarily generated and collected locally<sup>7</sup> from:

- a court cost assessment of \$35 by all courts of original criminal jurisdiction on every conviction other than parking violations, generally referred to as Traffic Ticket funding;<sup>8</sup>
- a percentage of the collections on bond forfeitures;<sup>9</sup>
- court ordered payment by partially indigent defendants;<sup>10</sup> and
- beginning in 2003, a \$40 application fee paid by each person applying for indigent defense counsel.<sup>11</sup>

By far, Traffic Ticket funding made up the largest portion of the funding. The only state contribution<sup>12</sup> to the funding of indigent defense was \$9.5 million as of 2006, distributed through the Louisiana Indigent Defense Assistance Board but without that agency having any true oversight of or accountability by the local districts.

Act 307 created, for the first time in Louisiana, a comprehensive statewide public defense system under the administration of the Louisiana Public Defender Board (LPDB). LPDB is charged “to provide for the supervision, administration, and delivery of a statewide public defender system, which must deliver uniform public defender services in all courts in this state.”<sup>13</sup> To carry out this mission, the LPDB is given complete authority and control “over all aspects of the delivery of public defense services throughout the courts of the state of Louisiana.”<sup>14</sup> The local indigent defender boards were abolished. Concomitant with the passage of Act 307, the legislature increased the state funding of

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indigent defense to \$28,131,238,<sup>15</sup> administered by the LPDB through the Louisiana Public Defender Fund.<sup>16</sup> Locally generated funding from court costs, bond forfeitures, and recoupment from and application fees of defendants continue to be deposited into the local indigent defender fund of each judicial district.<sup>17</sup>

Day-to-day operations of the state public defense system are carried out by the state staff.<sup>18</sup> Once the members of the LPDB were appointed, they set about hiring the state office staff mandated by Act 307. The present state public defender took her position on June 2, 2008. Over the next year, additional positions were filled and staffing was fairly well completed by August of 2009. The LPDB Staff is charged with, among other things, assessing the performance of all indigent defense attorneys within the system<sup>19</sup> and with implementing and ensuring compliance with all statutory and regulatory standards and guidelines.<sup>20</sup>

In order to ensure continuity of operations of defense systems throughout the state as Act 307 was implemented, the legislature directed that any person serving as chief indi-

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## Methodology

NLADA has long played a leadership role in the development of national standards for public defense systems<sup>a</sup> and processes for evaluating a jurisdiction's compliance with those standards.<sup>b</sup> The concept of using standards to address quality concerns is not unique to the field of indigent defense. In fact, the strong pressures of favoritism, partisanship, and/or profits on public officials underscore the need for standards to assure fundamental quality in all facets of government. For instance, realizing that standards are necessary to both compare bids equitably and to assure quality products, policymakers long ago ceased automatically taking the lowest bid to build a hospital, school, or a bridge and required winning contractors to meet minimum quality standards of safety. So must there be minimum standards for quality in the provision of counsel to the poor.

The use of national standards of justice in this way reflects the demands of the United States Supreme Court in *Wiggins v. Smith*, 539 U.S. 510 (2003) and *Rompilla v. Beard*, 545 U.S. 374 (2005). In *Wiggins*, the Court recognized that national standards, including those promulgated by the American Bar Association (ABA), should serve as guideposts for assessing ineffective assistance of counsel claims. The ABA standards define competency, not only in the sense of the attorney's personal abilities and qualifications, but also in the systemic sense that the attorney practices in an environment that provides her with the time, resources, independence, supervision and training to effectively carry out her charge to adequately represent her clients. *Rompilla* echoes those sentiments, noting that the

ABA standards describe the obligations of defense counsel "in terms no one could misunderstand."<sup>c</sup>

The American Bar Association's *Ten Principles of a Public Defense Delivery System* present the most widely accepted and used synopsis of national standards for public defense. Adopted in February 2002, the ABA *Ten Principles* distill the existing voluminous standards for public defense systems to their most basic elements, which officials and policymakers can readily review and apply. In the words of the ABA Standing Committee on Legal Aid and Indigent Defendants, the *Ten Principles* "constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney."<sup>d</sup>

Over the past forty years, the specialized nature of juvenile procedures has grown in scope. Juvenile defenders need not only be aware of the procedural rules and constitutional criminal procedures of the juvenile and adult court systems, but also must be aware of the developmental and mental abilities of their young clients, collateral consequences of conviction (including immigration, access to housing and jobs, admission into armed services, among others), and the enhanced protections for children under federal and state law. To help policymakers understand their responsibilities in the realm of juvenile representation, the prevailing standards are the *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems*, promulgated by the National Juvenile De-

gent defender of a judicial district as of January 1, 2007 would continue to be employed by or under contract with the new system going forward.<sup>21</sup> Similarly, the LPDB was to preserve the method of delivering services in the then existing district public defender programs so long as: they provide effective assistance of counsel; they meet performance standards; and the delivery method employed in the district is consistent with all statutory and regulatory standards and guidelines.<sup>22</sup>

The National Legal Aid & Defender Association (NLADA) was retained by the LPDB to conduct a management evaluation of the 15th Judicial District Indigent Defender Office. LPDB requested NLADA specifically to: evaluate the organizational structure, practices, and policies; evaluate the caseloads, workloads and workflow impediments; and identify the availability and use of investigators. NLADA assembled a site-visit team of professional researchers and leading public defense practitioners<sup>23</sup> to conduct in-court observations and interviews with defense providers and other key players in the local criminal justice system, including district and city court judges, prosecutors, law enforcement

fender Center and NLADA's American Council of Chief Defenders. The *Ten Core Principles* provide "criteria by which an indigent defense system may fully implement the holding of *In Re Gault*" in areas specific to the welfare of children like educational advocacy and right to treatment.

Finally, NLADA looked to the Louisiana Public Defender Act of 2007, which sets out in detail the powers and duties of the Louisiana Public Defender Board, of the LPDB state staff, and of the district defenders.

<sup>a</sup> National Study Commission on Defense Services, U.S. Department of Justice, *Guidelines for Legal Defense Systems in the United States*, 1976; ABA, *Ten Principles of a Public Defense Delivery System*, adopted 2002; NLADA, *Standards for the Appointment and Performance of Counsel in Death Penalty Cases*, 1988 (adopted as ABA, *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases*, 1989), NLADA, *Defender Training and Development Standards*, 1997; NLADA, *Performance Guidelines for Criminal Defense Representation*, 1995; NLADA, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, 1984 (adopted by the ABA, 1985); NLADA, *Standards for the Administration of Assigned Counsel Systems*, 1989; NLADA, *Standards and Evaluation Design for Appellate Defender Offices*, 1980; NLADA, *Evaluation Design for Public Defender Offices*, 1977; and NLADA, *Indigent Defense Caseloads and Common Sense: An Update*, 1994).

<sup>b</sup> NLADA's standards-based assessments utilize a modified version of the Pieczenik *Evaluation Design for Public Defender Offices*, which has been used since 1976 by leading criminal justice organizations, such as the National Defender Institute and the Criminal Courts Technical Assistance

Project of the American University Justice Programs Office. The NLADA protocol combines a review of a jurisdiction's budgetary, caseload and organizational information with site visits to observe courtroom practices and/or to interview defense providers and other key criminal justice policymakers (e.g., judges, prosecutors, county officials). This methodology ensures that a variety of perspectives is solicited and enables NLADA to form as complete and accurate a picture of a public defense system as possible.

<sup>c</sup> Citation to national public defense standards in court decisions is not limited to capital cases. See, for example: *United States v. Russell*, 221 F.3d 615 (4th Cir. 2000) (Defendant was convicted of prisoner possession of heroin; claimed ineffective assistance of counsel; the court relied, in part on the ABA Standards to assess the defendant's claim); *United States v. Blaylock*, 20 F.3d 1458 (9th Cir. 1993) (Defendant convicted of being a felon in possession of a weapon; filed appeal arguing, in part, ineffective assistance of counsel. Court stated: "In addition, under the *Strickland* test, a court deciding whether an attorney's performance fell below reasonable professional standards can look to the ABA standards for guidance. *Strickland*, 466 U.S. at 688." And, "While *Strickland* explicitly states that ABA standards 'are only guides,' *Strickland*, 466 U.S. at 688, the standards support the conclusion that, accepting Blaylock's allegations as true, defense counsel's conduct fell below reasonable standards. Based on both the ABA standards and the law of the other circuits, we hold that an attorney's failure to communicate the government's plea offer to his client constitutes unreasonable conduct under prevailing professional standards."); *United States v. Loughery*, 908 F.2d 1014 (D.C. Cir. 1990) (Defendant pleaded guilty to conspiracy to violate the Arms Control Export Act. The court followed the standard set forth in *Strickland* and looked to the ABA Standards as a guide for evaluating whether defense counsel was ineffective.)

<sup>d</sup> American Bar Association. *Ten Principles of a Public Defense System*, from the introduction, at: <http://www.abanet.org/legal/services/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf>. The *Ten Principles* are attached as Appendix A.

officials, the staff and contract attorneys of the 15th Judicial District Indigent Defender Office, members of the LPDB, and others. On-site work was conducted on September 1-3, and September 21-24, 2009.<sup>24</sup>

### Overall Finding

Act 307 has yet to take root in the 15th JDC, as detailed throughout the rest of the report. As opposed to the Legislature's intent to impose oversight as a means of guaranteeing effective assistance of counsel, the indigent defense office (IDO) of the 15th JDC operates with little coordinated management. Attorneys are paid a single flat fee to take an unlimited number of cases, creating a financial conflict between the rights of the defendant to competent counsel and the attorney's take home pay. Indigent clients facing misdemeanor or traffic offenses carrying jail time may very well not receive counsel at all, despite the state and federal Constitutional mandates that they be afforded an attorney. Defendants are likely to be represented by as many as three or four different attorneys during the course of a single case – typically known as “horizontal representation” and universally decried by all national standards and Act 307.

Many of the attorneys carry excessive caseloads as defined by national standards, *before* factoring in their private caseload. The large caseloads carried by these attorneys prevent them from pursuing meaningful communication with their indigent clients. As a result, the lawyers end up meeting with their clients at the courthouse on dates when cases are set for hearing or trial. An inaptly named “open file discovery” policy has the adverse affect of encouraging attorneys never to file motions. Access to investigators – though changing since NLADA's initial site visit – has been virtually non-existent during the tenure of the current district defender. New attorneys are thrown into court with little training and no structure is in place to assess attorney performance. Indigent clients found or pled guilty are regularly assessed an excessively large amount of fees to be paid as a condition of probation, including the cost of their inadequate defense. Failure to pay such fees will result in the revocation of their probation and jail time to be served at further taxpayer expense.



# **The 15th Judicial District Indigent Defender Office**

The 15th Judicial District encompasses Lafayette, Acadia, and Vermilion Parishes. There are multiple courts within each of the three parishes, with the Lafayette court system being by far the largest.

### **Acadia Parish**

District Court: 3 divisions

Crowley City Court

Rayne City Court

### **Lafayette Parish**

District Court: 8 divisions

Lafayette City Court:

2 divisions

### **Vermilion Parish**

District Court: 2 divisions

Abbeville City Court

Kaplan City Court

The 15th Judicial District Indigent Defender Office (IDO)<sup>25</sup> has its primary office in downtown Lafayette, one block from the courthouse and across the street from the parish jail. The IDO maintains a physical location in both of the other two parishes as well: one in Crowley, located on the courthouse square; and an office space located on the first floor of the courthouse in Abbeville. The sole functions of the three physical office locations of the IDO are to process the financial verification of eligibility of potential clients, send notice of counsel being appointed, and to administer the contracts and payroll for the public defense system attorneys.



There are only six employees within the IDO, plus a secretary who has joined as a seventh hourly-pay employee between the time of the site visit and the release of this report. The office manager works out of the Lafayette office and administers all attorney contracts, payroll, and acts as the primary point of contact. There are also 2.5<sup>26</sup> staff clerks in the Lafayette office. The Acadia Parish office in Crowley has one staff clerk. The Vermilion Parish office in Abbeville has 1.5 staff clerks. All attorney staff of the IDO are on contract in a part-time capacity,<sup>27</sup> including the district defender.

The district defender has served for eight years. He was originally contracted in 2003 by the local indigent defender board (disbanded as a result of Act 307) and has remained in place under the LPDB. As district defender, he handles a limited IDO caseload and contracts with approximately 49 other attorneys to represent indigent defendants in the three parishes of the district. Throughout his tenure as district defender and at the time of the site visit in September 2009, he worked out of his private law office where he employed a legal secretary, handled private paying criminal cases, and accepted federal appointments through the CJA panel of the Federal Public Defender for the Middle and Western Districts of Louisiana. He has advised NLADA subsequently that he has closed his private office and his private secretary is now employed by the IDO.

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The 49 attorneys of the IDO and the district defender are all contracted under individual 12-month contracts.<sup>28</sup> Each defender is paid a flat annual fee to accept a certain category of cases. Although the contracts do not so state, each defender provides representation only within a single parish in the district. The only changes to the contract for each individual defender are their name, their specific case type assignment in paragraph 3.A., and the amount of their annual flat fee in paragraph 3.B.<sup>29</sup> For those defenders who are available to provide capital case defense services, there is a separate contract that is in addition to their regular contract.<sup>30</sup> The capital defense contract varies slightly in its language from the regular contract, but again the contract is exactly the same for each defender who signs it. Detailed discussion of these contracts follows in the next subsection of this report. The IDO system does not employ or have on contract any investigators or social workers.

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### Vermilion Parish

#### Physical Office Facilities

The IDO office in Vermilion Parish is a small room on the first floor of the Courthouse, located through two sets of doors, down a hallway, and behind a third unmarked door. It is very difficult to find, and it does not have any permanent identification or plaque affixed to the door or even near it. In the first floor hallway, there is a paper sign taped to a door which says: “Public Defender’s Office Through This Door.” Through that door is a small space that leads to a second door – invoking the feeling of being in a law enforcement controlled space. After passing through this second door, you are in a hallway and immediately facing yet another door bearing a sign that reads “Police Jury.” The only choice is to enter the Police Jury room or turn to the right which leads you directly into the Clerk of Court office. Just to the left of the Clerk of Court office, there is an unmarked door and behind that unmarked door is the space that serves as the IDO office in Vermilion Parish.

Clients of the IDO, in Vermilion Parish, are told to go to this IDO office to pay their application fee. Clients do not typically go inside of the IDO office. Instead, the approximately 9x12 foot space has a door with a built-in window for physically collecting applications and fees, much like an enclosed bank teller space. But more importantly, it is not unusual for clients to wend their way to the office, only to find that the door is locked and the office is unattended. This is because there is only one full-time IDO staff person who works in this office, with the help of an additional staff per-

son who works two days in Vermilion and three days in Lafayette. Both of these clerical staff must be in the courtroom when 72-hour hearings are being held and when arraignments are being held in any of the four courts in Vermilion, and they also must go to the jail to obtain applications for counsel from in-custody defendants. So, when they are in court or at the jail, the IDO office is closed. Similarly, if a client calls the office and no one is there, there is only a recording that instructs you to “please leave a message after the tone.” There is no instructive information on either the telephone message or the door of the office regarding office hours or when a client can reasonably expect any IDO personnel to be present.

A member of the clerk of court staff confirmed that the IDO office is frequently closed. It is impossible for the clerk of court staff to be unaware, because many clients and their family members end up in the Clerk of Court office by pure mistake, as they try to locate the unmarked IDO office. And even those who successfully find the IDO office often seek help from the clerk of court because of the absence of any notice or instructions or human presence at the IDO office.

From the moment that a defendant is arrested until they receive notice of appointment of trial counsel (which typically does not occur until 10 to 15 days after their arraignment, meaning often 2 to 5½ months after arrest), this “office” is the only point of contact between a Vermilion Parish defendant and the IDO.



## 15th JDC Indigent Defender Office

### Lafayette Parish

David Balfour, district defender & felony attorney  
Chris St. Julien, paralegal & office manager

#### IDO Staff/Clerks

Kim Thibodeaux  
Lindsey McManus  
Danielle Menard (splits part-time between Lafayette & Vermilion)

#### FELONY ATTORNEYS

Randy Lasseigne  
Travis Mose  
Luke Edwards  
Eric Neumann  
Kirk Piccione  
Randal McCann  
Jennifer Robinson  
Valerie Garrett  
Harold Register  
Dan Kennison  
Gerald Block  
Valex Amos  
James Dixon, Jr.

#### PRE-INDICTMENT

Remy Jardell

#### REVOCATION

Chris Larue

#### MISD. ATTORNEYS

Kay Gautreaux  
Richard Mere  
Chris Richard  
Lenise Williams

#### TRAFFIC/IWC

Tricia Pierre

#### NON-SUPPORT

Monique Cloutier

#### JUV/CINC

Lloyd Dangerfield  
Vivian Neumann  
Allyson Prejean  
Thomas Dupont

#### CITY COURT

Roshell Jones  
Christ Beaner  
Christopher Evans

### Acadia Parish

#### IDO Staff/Clerks

Annette Guidry

#### FELONY ATTORNEYS

Jack Nickel  
Burleigh Doga  
Kim Hayes  
Glenn Howie  
Clay Lejuene

#### MISD/JUVENILE/CITY

Rhett Harrington  
Michael Landry  
James Landry  
Brett Stefanski  
Scott Privat

### Vermilion Parish

#### IDO Staff/Clerks

April Broussard  
Danielle Menard (part-time)

#### FELONY ATTORNEYS

Ronald Melebeck  
Pat Thomas  
Linda Veazey  
Louis Garrott  
Gabe Duhon  
Jan Rowe  
Burton Guidry

#### PRE-INDICTMENT

Joann Nixon

#### MISD/JUVENILE

Bart Broussard  
Nicole Guidry  
Julie Rosenzweig

This office structure chart is provided to give the reader a general overview of the staffing and primary attorney responsibilities, based on the 2009 contracts and at the time of the site visit in September 2009. Many of the attorneys have additional responsibilities beyond those shown here. Appendix V shows the complete representation responsibilities of every IDO attorney, as provided by the 15th IDO as of April 2010.

## A. Organizational Structure, Practices, and Policies

### i. Independence, Funding and Structure

#### ***Guidance of National Standards, ABA Principles 1 and 2***

The first of the ABA's *Ten Principles* addresses the importance of independence in indigent defense systems, explicitly limiting judicial oversight and political interference in the day-to-day administration of the system. The second of the *Principles* emphasizes that state funding and oversight are required to ensure uniform quality of services to all defendants in a state. This is to carry out the critical but often overlooked aspect of the Supreme Court's landmark ruling in *Gideon v. Wainwright* that the Sixth Amendment's guarantee of counsel was "made obligatory upon the States by the Fourteenth Amendment" – not upon county or local governments.<sup>31</sup>

#### ***Requirements of Act 307***

In creating the statewide public defense system of Act 307, the Louisiana legislature went far toward achievement of both of these principles. Local judges were removed entirely from oversight of public defense providers to any extent greater than they would have over a privately retained attorney or a prosecutor. Local indigent defender boards were abolished, eliminating the dangers of political interference and cronyism in the daily administration of the systems.

The LPDB was established as an independent non-partisan agency within the executive branch of government and was given full authority and control over all aspects of the delivery of public defense services throughout the state.<sup>32</sup> And, while not achieving 100 percent state funding of indigent defense services, the state of Louisiana now provides the majority of the funding statewide.

#### ***Current Practice in the 15th Judicial District IDO***

Though the LPDB has statutory authority, it is taking some time for that authority to be fully implemented throughout all of Louisiana's judicial districts. The state office, charged with carrying out the LPDB's responsibilities, was not fully staffed until approximately August of 2009. They have begun gathering the data and conducting the assessments necessary to determine the status of the provision of defense services in the now 43 judicial districts of the state. In the course of that information gathering, the LPDB staff has uncovered and corrected numerous instances of inappropriate policies and activities occurring in the judicial district defender systems.<sup>33</sup> As the LPDB chair said, there have certainly been some disappointing discoveries, but they are "a sign that the over-

sight and supervisory structure created by the Legislature in the 2007 Public Defender Act is working, as it should, on behalf of clients and the public.”

Accountability was lacking when each of the district public defense systems was fully autonomous, and accountability is now in place. LPDB’s request for an outside management evaluation of the 15th Judicial District Indigent Defender Office is one of the ways in which the LPDB state staff is fulfilling its statutory responsibility to “[r]eview, monitor, and assess the performance of all attorneys . . . to provide counsel for indigent defendants”<sup>34</sup> and to “[i]mplement and ensure compliance with contracts, policies, procedures, standards, and guidelines adopted pursuant to rule by the board or required by statute.”<sup>35</sup>

### *Awareness and Communication of Authority of the LPDB*

One of the challenges faced by the LPDB and state staff is finding effective ways to communicate to indigent defense attorneys and support staff, criminal justice system

## IDO Budget 2008

The 2008 Fiscal Year Budget for the 15th Judicial District IDO<sup>a</sup> projected total local revenue of \$1,959,200. Local revenue is received from five sources and was budgeted for 2008 in the following amounts:

Application Fees (from defendants)	\$	260,000	(13.27%)
Partially Indigent Fees (from IDO clients)	\$	100,000	( 5.10%)
Court Costs	\$	1,179,200	(60.19%)
Bond Forfeitures	\$	375,000	(19.19%)
Interest Earned	\$	45,000	( 2.30%)
<b>Total Anticipated 2008 Local Revenue</b>	<b>\$</b>	<b>1,959,200</b>	

Under Act 307, these funding sources that are collected locally continue to be deposited into the local indigent defender fund of each of the judicial districts.<sup>b</sup>

Of these five sources of locally collected revenue, the only one that is within the power of the IDO to attempt to increase is the assessment and collection of “Partially Indigent Fees” from clients of the IDO. By increasing the assessments made of clients, an IDO can increase its operating budget and thereby increase pay to attorneys and staff. Of the total actual 2008 expenditures, \$2,543,883.89 (85 percent) went to the 48 contract attorneys, leaving 15 percent to cover all other expenses including the salary of clerical staff, investigators, experts, rent, and utilities.<sup>c</sup>

Expenditures in the 2008 Fiscal Year Budget were projected to be \$2,963,550, for a projected deficiency of \$1,004,350. The only source of revenue for the IDO, beyond the locally collected sources, is the LPDB District Assistance. Actual revenues and expenditures for the IDO during the 2008 calendar year were:

Application Fees (from defendants)	\$	96,237.18	( 3.3%)
Partially Indigent Fees (from IDO clients)	\$	258,591.02	( 8.9%)
Court Costs	\$	1,429,210.35	(49.5%)
Bond Forfeitures	\$	329,279.52	(11.4%)
Interest Earned	\$	30,165.40	( 1.0%)
Miscellaneous	\$	1,500.00	( 0.1%)
LPDB State Funds	\$	744,580.00	(25.8%)
<b>Total Actual 2008 Revenue</b>	<b>\$</b>	<b>2,889,563.47</b>	
<b>Total Actual 2008 Expenditures</b>	<b>\$</b>	<b>2,962,545.92</b>	

The LPDB state assistance to the IDO constituted 25.8 percent, or roughly one-fourth of total revenue.

<sup>a</sup> See Appendix G.

<sup>b</sup> 2007 La. Acts 307, section 168.

<sup>c</sup> See 15th Judicial District Indigent Defender Board, Financial Statement, December 31, 2008, prepared by J.L. Sonnier, Certified Public Accountant. Attached as Appendix H.

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stakeholders, and the public. Act 307 created the position of district defender to manage the public defender services in each judicial district<sup>36</sup> and specifically to supervise the work of the district personnel and implement the standards, guidelines, and procedures of the LPDB and LPDB staff.<sup>37</sup> Thus the district defender is to be the conduit of information from the LPDB and LPDB staff to the local system. Our evaluation of the 15th Judicial District IDO revealed some concerns in this regard.

### Independence

“In recognition of its mandates under both the United States and Louisiana constitutions, the legislature enacts the Louisiana Public Defender Act of 2007 to provide for . . . [e]nsuring that the public defender system is free from undue political and judicial interference and free of conflicts of interest.”<sup>a</sup> Act 307 carried out this legislative intent, in part, by eliminating the local indigent defender boards and the selection of their members by district court judges. Today, local judges should not be selecting the public defense attorneys who appear before them to represent indigent clients, just as they do not select the private attorneys who appear before them to represent paying clients. Though Act 307 plainly intended to ensure independence of public defense attorneys, a district defender can give away that independence if they manage the system in a way that assigns an attorney to a judge, rather than to a client.

Although the contracts between the IDO and the individual attorneys are silent on this topic, in fact each defender provides representation only within a single parish in the district. And then within that single parish, each attorney provides representation in only certain types of cases and sometimes in only certain courts. When this is combined with the way in which the judges allocate cases among themselves, the result is that each IDO attorney in fact is being assigned to the courtrooms of generally only 2 or 3 judges.

There are 13 district court benches within the 15th Judicial District. The chart to the right helps in conceptualizing the actual role of each of these judges within the district.

Traditionally, each judge sat only in the parish shown below. So, Judges Trahan, Everett, and Earles were the only district judges sitting in Acadia Parish; and any public defender working in Acadia would appear only before these three judges. Similarly, only Judges Broussard and Conque sat in Vermilion Parish; and any public defender working in Vermilion would appear only before these two judges. Lafayette Parish operated a “track system” (which always excluded Judges Blanchet and Keaty who sit only in Family Court cases), so the six remaining judges divided themselves into four felony tracks. If a felony case was allotted to Track 1, then that case could be presided over by any of the Track 1 judges, such that motions might be heard before one judge while trial in the same case could be conducted before another judge, and so forth for the other three tracks. By

Div	Judge	Parish	04/20/09 - 12/17/2009	02/25/10 - present
Div A	Trahan	Acadia	Fel Track 3	
Div B	Edwards	Lafayette	Fel Track 1 “Drug Track”	
Div C	Broussard	Vermilion	Fel Track 4	
Div D	Rubin	Lafayette	Fel Track 1; Juv; “Drug Court”	
Div E	Clause	Lafayette	Fel Track 3; Juv	
Div F	Everett	Acadia	Fel Track 3	
Div G	Conque	Vermilion	Fel Track 3	
Div H	Blanchet	Lafayette – Family		
Div I	Duplantier	Lafayette	Fel Track 2, 4; Juv	Juv
Div J	Earles	Acadia	Fel Track 2	
Div K	Michot	Lafayette	Fel Track 2, 3, 4; Acadia; Vermilion	
Div L	Castle	Lafayette	Fel Track 2, 4; Vermilion	Juv
Div M	Keaty	Lafayette – Family		

The 2009 IDO contract with each of the defense attorneys is wholly silent about any need to comply with or even the existence of the rules and standards<sup>38</sup> of the LPDB. The contract states:<sup>39</sup>

1.D. Representation provided by Counsel is not subject to detailed instruction from The Program as to how to achieve representation of the clients. However, The Program may

long-standing tradition, the Lafayette felony defense attorneys were also assigned to tracks, which meant that any felony attorney practiced only before 2 or 3 judges. Track 1 attorneys are: David Balfour, Randy Lasseigne, Travis Mose, and Luke Edwards. Track 2 attorneys are: Eric Neumann, Kirk Piccione, Randal McCann, and Jennifer Robinson. Track 3 attorneys are: Valerie Garrett, Harold Register, and Dan Kennison. Track 4 attorneys are: Valex Amos, Gerald Block, and James Dixon.

At the time of the NLADA site evaluation (during the 04/20/09 to 12/17/09 timeframe shown in table on preceding page), the judges were in the midst of changing their own system regarding the parishes in which they sit,<sup>b</sup> though the Lafayette track system was still in place at that time. In Acadia Parish, Judge Michot from Lafayette was occasionally sitting in addition to the Acadia Parish division judges. In Vermilion, Judges Michot and Castle from Lafayette were both occasionally sitting in addition to the Vermilion Parish division judges. And in Lafayette, all three of the Acadia Parish judges and both of the Vermilion Parish judges were occasionally sitting in Lafayette Parish.

The IDO attorneys voiced a good bit of consternation at having to appear before new and unfamiliar judges who had different ways. Two Vermilion attorneys said the Lafayette judges were terrible and disregard defendant's rights, and that they would prefer to have "their own judges" rather than for judges to rotate through the district.

At least one judge was disturbed by the defense practices he observed when sitting for the first time outside his own parish. He had recently sat in Lafayette for the first time and had presided over misdemeanor probation revocations. He was very concerned that there were no lawyers appearing with the defendants, yet he was being asked by the prosecutor to impose sentences of typically 5 months in jail. He apparently did not feel that he had the power to alter the regular practice in the Lafayette courts by requiring that attorneys be appointed to these clients.

It appears from the current on-line 15th Judicial District Court "2010 Court Calendar" that the judges have now successfully completed their transition away from the track system. NLADA suspects, however, that IDO Lafayette felony attorneys are still appointed on the basis of track and that this likely still has the functional outcome of causing certain attorneys to appear only or primarily before 2 or 3 judges. And those IDO attorneys who do not handle felonies are most assuredly still appearing before a limited number of judges. For example, in Lafayette District Court: Commissioner Frederick conducts all arraignments and the Lafayette pre-indictment attorney appears for all arraignments; all juvenile matters are heard by Judges Duplantier and Castle, and all Lafayette juvenile matters are appointed to Allyson Prejean, Lloyd Dangerfield, and Vivian Neumann. Julie Rosenzweig will only ever appear before the two judges of Abbeville City Court and Kaplan City Court.

Of great concern is the sense of ownership that some judges evidenced regarding the IDO attorney assigned to their court. In Lafayette, *all* felony drug probation revocation cases are heard by Judge Edwards. He requested that the district defender designate a single attorney to represent all indigent defendants in these proceedings. And the district defender complied. The judge said: "They hired a single attorney to handle *my* revocation docket." The newest member of the IDO appears *only* before Judge Edwards in felony drug revocation proceedings, in addition to serving as the Lafayette pre-indictment attorney. Likewise, the judge presiding over the juvenile drug court had requested a particular IDO attorney be assigned, and the IDO attorney agreed to serve in that capacity *as a favor to the judge*.

<sup>a</sup> 2007 La. Acts 307, section 142.B.(2).

<sup>b</sup> The court calendars for the two time periods shown in the chart are attached as Appendix F.

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## ABA Principle 1

**The public defense function, including the selection, funding, and payment of defense counsel, is independent.** The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

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## ABA Principle 2

**Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.** The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

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establish general guidelines or may prohibit certain acts or practices of Counsel as it deems appropriate. In all aspects counsel is a general contractor whose obligations [sic] to deliver legal representation to clients in accordance with the Constitutions of the United States and the State of Louisiana, Louisiana Law, the rules of ethics of the Louisiana State Court and the local rules of the 15th Judicial District Court.

Of note, it appears that one attorney must have had independent awareness of the authority of the LPDB over the provision of defense services, as a single one of all of the 2009 contracts contains a hand-written alteration to the standard language in the paragraph governing when an attorney may be suspended without pay by the IDO. The standard sentence in the contracts reads: "Counsel agrees that the judgment of The Chief on such questions is final and binding." This one contract was hand-changed to read: "Counsel agrees that the judgment of **the State Board** on such questions is final and binding."

The office manager advised that she disseminates policies and performance guidelines to the IDO attorneys, usually including them along with the attorneys' monthly pay stubs and sometimes sending them by email. Yet when the site team inquired of the IDO attorneys about whether they were aware of the *Trial Court Performance Standards* that had been promulgated five months earlier, most of them were completely unaware of the document, while only a few said they recalled having read it a while back. The IDO does not take any steps to ensure that the attorneys have actually received or read these policies.

Effective September 14, 2009, the district defender notified the IDO attorneys that, in compli-

ance with LPDB policies, they are now being required to keep track of and report their time spent in representing IDO clients.<sup>40</sup> The tone of that communication, however, leaves much to be desired from a district defender fulfilling the crucial role as conduit of information between the LPDB and the attorneys providing services to clients. The memo states:

I have good news and bad news.

...

Now the bad news.

Baton Rouge is requiring that all attorneys write time for all IDO work. Time is to be recorded in increments of 1/10 hour, 1/10 equaling six minutes. Please round up or down appropriately. Also, I ask that everyone try to record your time accurately. This is not insurance defense work. The time you record will not translate into more income. These time records must be provided by [sic] to [the office manager] by the 5th of each month. Finally, only lawyer time is to be recorded, not staff time.

This memo conveys the clear impression that keeping track of and reporting time spent on indigent defense cases is merely a burden being imposed by the LPDB that will not produce more income for the attorneys. It is of concern that he does not emphasize the importance of accountability and that determining how much time is actually spent by attorneys on behalf of their clients will allow the LPDB to seek necessary resources and properly allocate those resources uniformly throughout the state. It is of equal concern that he chooses instead to emphasize to defenders that they will not make more money by complying with LPDB policies, drawing attention to the fact that these defenders operate under flat-fee contracts that place their own financial interests in conflict with the interests of their clients.

Two of the IDO attorneys expressed the view that it was unfair for the LPDB state office to require them to keep data and time. They felt they were already overworked, did not have time to enter data in addition to handling their designated IDO caseload, and frankly did not feel that they should be held accountable for their time since they were contractors rather than employees.

### *Appearance of Self-Dealing*

Another difficulty arising during the implementation of Act 307 is full integration of the district defenders into the statewide public defense system. As noted earlier, prior to 2007, every local indigent defense system was fully autonomous and the chief public defender of each system was in charge, reporting only to their local indigent defender



board. Under Act 307, each district defender is either an employee of or a contractor with the LPDB.<sup>41</sup> Like many other former chiefs, the district defender of the 15th JDC automatically came under contract with the LPDB, by virtue of having been the chief indigent defender as of January 1, 2007, and at the same compensation level he had previously received.<sup>42</sup> Yet there is no signed contract between the LPDB and the district defender.<sup>43</sup> Instead, there is a document that purports to be a contract signed by the district defender in his management capacity and the district defender in his attorney capacity, hiring himself to serve as district defender and to provide felony representation.<sup>44</sup>

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### ***ABA Principle 8***

**There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

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ments and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services.”<sup>45</sup>

Flat-fee contracts, which pay a single lump sum for an unlimited number of cases regardless of how much work the attorney does, create a direct financial conflict of interest between the attorney and the client, in derogation of ethical and constitutional mandates governing the scope and quality of representation. Under this type of contract, any work performed by the attorney beyond the bare minimum effectively reduces the attorney’s take-home compensation. And without regard to the necessary parameters of ethical representation, the attorney’s caseload will creep higher and higher, yet the attorney is in no position to refuse an excessive number of cases – in fact they are contractually bound to accept them no matter how many.

District defenders should not be signing as both parties to a contract under which they will then determine their own annual salary.

#### *Flat-Fee Contracts*

An additional area of concern with regard to the contracts presently being used by the IDO involves flat-fee contracting. The eighth of the ABA *Ten Principles* explains that “[c]ontracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance require-



## A Tale of Two Counties: Washington State & the Prohibition of Flat-Fee Contracts

In January 2009, the Washington Supreme Court banned indigent defense providers from entering into flat fee contracts because of the inherent conflict of interest it produces between a client's right to adequate counsel and the attorney's personal financial interest. The decision was the result of the great disparity of services provided by Washington's counties.

For example, King County, Washington (Seattle) has a high quality indigent defense system. Poor people charged with crimes in Seattle are assigned to one of four independent, non-profit private law firms that contract with the county to provide right to counsel services. The contracts with the county government limit the number of cases to reasonable levels. If, for instance, the district attorney's office finds reason to charge a defendant with a crime carrying the possibility of a death sentence, the public defender automatically receives additional money from the county to put two attorneys solely on that one case until its completion. Oftentimes this results in the public defender offering mitigation evidence to the prosecutor in advance of a formal filing of death penalty charges to persuade the prosecution that it is not in the best interest of justice to continue to pursue death as a sentencing option. The executive director of at least one office is clearly seen as an equal partner in the administration of justice and the setting of criminal justice policy.

Contrast that with Grant County, Washington — a jurisdiction of approximately 80,000 that is situated two counties east of King County. Grant County contracted with a single public defender to administer the indigent defense caseload for a predetermined dollar amount — regardless of the number of cases opened within that year — as a means of controlling rising criminal justice costs. The public defender administrator retained the authority to farm out any portion of the work for whatever price he could negotiate.

As a spotlight series conducted by the *Seattle Times* described it, “[t]he more cases [the administrator] kept for himself, the fewer he had to dole out. The fewer he doled out, the more money he kept.”<sup>a</sup> In one year, the administrator made \$225,000 — though to do so he had to handle 415 felony cases himself, or more than 175 percent above the prescribed number of felony cases any one attorney should ethically handle in a given year according to all nationally-recognized caseload standards. The Grant County indigent defense provider spent on average four hours on each case — including those cases that went to trial.

Grant County's problems were addressed as a result of an American Civil Liberties Union of Washington class action lawsuit against this system, alleging that the overwhelming caseload compelled the attorney to take short cuts, like failing to investigate cases, failing to file credible motions, and failing to meet with the clientele. The case was settled after Superior Court Judge Michael Cooper found that indigent defendants in Grant County have a “well-grounded fear” of not receiving effective legal counsel. Under the terms of the settlement, the county had to hire sufficient staff to meet national caseload guidelines, provide effective supervision and training, and hire a magistrate to ensure standards are met. Moreover, a client who spent months in jail due to the deficient work of his Grant County public defender was awarded \$3 million that held his public defender personally responsible for the inadequate service. The public defender was also disbarred. Grant County settled with this one client for \$250,000.

<sup>a</sup> Ken Armstrong, Florangela Davila and Justin Mayo. “The Empty Promise of an Equal Defense: Part 2: Attorney profited, but his clients lost.” *The Seattle Times*, Local News: Monday, April 05, 2004.

As mentioned in the previous section, each of the 49 attorneys of the IDO and the district defender are all contracted under individual 12-month contracts where they are paid a flat annual fee to accept a certain category of cases.<sup>46</sup> The flat-fee amount for each attorney under their IDO contract is determined based on: (1) base pay for the category of case they are contracted to handle; (2) \$500 for each year of service as a contract attorney with the IDO, up to a maximum of \$10,000; and (3) administrative duties within the IDO system. The base amounts that attorneys are paid for each category of case have var-

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ied from 2007 to 2008 to 2009. Based on all of the information provided both orally and in writing, NLADA has prepared a chart (see pages 20 - 21) showing the breakdown of the flat-fee contract amount for each IDO attorney under the contracts as signed in January 2009 and in effect until (apparently) September 1, 2009.<sup>47</sup> During that time period, it appears that contract amounts were determined as follows:

- Attorneys available for appointment in capital cases receive a base contract amount of \$12,000 for their availability; felony attorneys receive a base contract amount of \$42,700; juvenile attorneys receive a base contract amount of \$53,500;<sup>48</sup> and misdemeanor attorneys receive a base contract amount of \$26,500.
- Each attorney receives an additional \$500 for each year of service as a contract attorney with the IDO, up to a maximum of \$10,000.
- A small number of the attorneys are paid for providing administrative or supervisory level services, including the district defender, however it is unclear how the amount of payment for those services is determined.

Critically, the amount the attorney is paid does not appear to bear any relationship to their caseload.<sup>49</sup> The workloads of the IDO attorneys are discussed in detail later in this report, however suffice it to say here that the IDO does not have any binding caseload limits for the number of cases that each attorney can be assigned to handle at any given time or during the course of a year, and in fact there is no limit under the contracts as to how many clients or cases an attorney can be forced to accept in return for the flat-fee paid. Additionally, all of the contract attorneys are expressly allowed to carry a private retained caseload in addition to their indigent caseload, without any obligation that they report the number of private cases they are handling.

Each IDO contract attorney is in essence paid a flat annual fee to *be available as a public defender* for some unlimited number of indigent defendants in a given category of cases in a given parish. The IDO leaves it almost exclusively in the hands of each contract defender to determine how to do that and how to bear the expense of doing that. Before each attorney represents a single client or earns a single dollar, they must *first* bear all of the costs of establishing an office from which they can provide criminal defense services. The IDO contracts require that:

- 2.A. Counsel is expected to have an active, ongoing law practice, with a physical address. Counsel shall provide office work product, secretarial, receptionist, telephone, telephone answering, fax, postage, copies and all other standard services. The cost of

these services and expenses remain solely the expense of Counsel and Counsel's responsibility.

2.B. Counsel shall provide all office supplies, including stationery and shall conduct representation under Counsel's letterhead and address. . . .<sup>50</sup>

All of the expenses listed in the contract, and additionally furniture and computers and malpractice insurance and state licensing & bar dues and legal research materials and utilities, are what is commonly referred to as "overhead" that is necessary simply for a defense attorney to remain operational from day-to-day.<sup>51</sup> Put another way, these costs must be paid *before a lawyer represents a single client*. Under the flat-fee contracts in use by the IDO, every one of the 50 attorneys providing defense services must pay for all of these overhead expenses out of the flat-fee rate paid pursuant to their contract. The IDO does not collect from its contract attorneys any information about the dollar amounts each of them expend in providing the overhead resources required of them under their contracts.

Once an attorney is actually designated as the defense attorney for a given client in a given case, then there are additional case-related out-of-pocket expenses that must also be borne by the contract attorney. These are the expenses that the attorney would not incur but for representing the client, and they include expenses such as long-distance telephone charges, mileage to and from court and to conduct investigation, preparation of copies and exhibits, costs incurred in obtaining discovery, and of course the cost of hiring necessary investigators and experts in the case. The current contract in use by the IDO requires each contract attorney to pay for all of these out-of-pocket expenses, other than for an investigator<sup>52</sup> and experts, out of the flat-fee rate paid pursuant to their contract, thus diminishing even further the amount of the fee actually earned by the lawyer. The IDO does not collect from its contract attorneys any information about the dollar amounts each of them expend in case-related expenses on behalf of each of their clients as required of them under their contracts.

The Louisiana Supreme Court long ago addressed the necessity of paying an attorney a reasonable and not oppressive fee to represent any indigent defendant, albeit in the context of a judge appointing a lawyer rather than in the context of an IDO contracting with a lawyer. In 1993 in *State v. Wigley*,<sup>53</sup> the Court said "that in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out-of-pocket expenses and overhead costs."<sup>54</sup> The fee to the lawyer – i.e., what the lawyer actually earns for representing the client – must be in addition to these overhead costs and out-of-pocket expenses. In the 15th Judicial District IDO, however, attorneys are paid a flat-fee, out of which they must pay first overhead and second case-related out-

## Attorney Contract Pay, in effect January 1 to September 1, 2009<sup>a</sup>

Attorney	Parish	Case Categories	Total Contract Paid, 2009	Capital Fees	Base Contract Pay	Seniority <sup>b</sup>	Administrative Duties
D. Balfour <sup>c</sup>	Lafayette	Felony, District Defender	\$94,600		\$21,350	\$10,000	\$63,250
G. Block <sup>d</sup>	Lafayette	Felony, Capital Coordinator	\$80,200		\$42,700	\$10,000	\$27,500
A. Prejean <sup>e</sup>	Lafayette	Juvenile, Juvenile Drug Court	\$67,300		\$64,300	\$3,000	
J. Nickelf <sup>f</sup>	Acadia	Felony, Felony Arraignments, Capital, Parish Coordinator	\$65,780	\$12,000	\$43,280	\$8,500	\$2,000
P. Thomas <sup>g</sup>	Vermilion	Felony, Capital	\$65,200	\$12,000	\$43,200	\$10,000	
L. Veazey <sup>g</sup>	Vermilion	Felony, Capital	\$65,200	\$12,000	\$43,200	\$10,000	
L. Garrott <sup>h</sup>	Vermilion	Felony, Felony Revocations, Capital	\$63,500	\$12,000	\$49,500	\$2,000	
L. Dangerfield	Lafayette	Juvenile	\$63,000		\$53,500	\$9,500	
B. Doga	Acadia	Felony, Capital	\$62,700	\$12,000	\$42,700	\$8,000	
H. Register	Lafayette	Felony, Capital	\$62,700	\$12,000	\$42,700	\$8,000	
G. Howie	Acadia	Traffic/Juv. Delinquency/Pre-Indict., Crowley City, Rayne City OCS	\$62,700		\$57,200	\$5,500	
V. Garrett	Lafayette	Felony, Capital	\$62,200	\$12,000	\$42,700	\$7,500	
B. Stefanski <sup>i</sup>	Acadia	Felony, District Court OCS	\$62,200		\$56,200	\$6,000	
E. Nuemann	Lafayette	Felony, Capital	\$61,700	\$12,000	\$42,700	\$7,000	
V. Amos	Lafayette	Felony, Capital	\$60,700	\$12,000	\$42,700	\$6,000	
K. Piccione	Lafayette	Felony, Capital	\$60,700	\$12,000	\$42,700	\$6,000	
V. Neumann	Lafayette	Juvenile	\$59,000		\$53,500	\$5,500	
C. Lejuene	Acadia	Felony, Capital	\$58,200	\$12,000	\$42,700	\$3,500	
N. Guidry	Vermilion	Misdemeanors, Juvenile, Abbeville City/Kaplan City OCS	\$57,900		\$55,900	\$2,000	
J. Dixon	Lafayette	Felony, Capital	\$56,700	\$12,000	\$42,700	\$2,000	
L. Edwards	Lafayette	Felony, Capital	\$56,200	\$12,000	\$42,700	\$1,500	
R. McCann	Lafayette	Felony, Capital	\$56,200	\$12,000	\$42,700	\$1,500	
B. Guidry	Vermilion	Felony, Capital	\$55,700	\$12,000	\$42,700	\$1,000	
K. Hayes	Acadia	Felony, Capital	\$55,200	\$12,000	\$42,700	\$500	
R. Melebeck	Vermilion	Felony, Parish Coordinator	\$54,700		\$42,700	\$10,000	\$2,000
B. Broussard	Vermilion	Misdemeanors, Juvenile, Revocations	\$51,650		\$47,650	\$4,000	

<sup>a</sup> See explanatory text at page 18. Appendix V, provided by the IDO, shows the compensation break-down for every IDO attorney as of April 2010.

<sup>b</sup> Seniority pay is capped at \$10,000. The amounts shown in this column were calculated based on the seniority pay for each attorney shown in the local IDO report from 2007, and adding \$1,000 (\$500 per year) to arrive at the 2009 seniority pay due to the attorney. 2007 IDO report attached as Appendix J.

<sup>c</sup> As of April 2010, the IDO advised that the district defender salary of \$94,600 was allocated as: base contract pay of \$48,000; seniority pay of \$10,000; and administrative duty pay of \$36,600.

<sup>d</sup> Block serves as "capital coordinator" according to his [delete per base] contract. No separate contract for capital cases for 2009 was provided to NLADA.

<sup>e</sup> 2009 base contract amount for juvenile representation is \$53,500. It is possible that Prejean's base contract includes \$10,800 for Juvenile Drug Court.

<sup>f</sup> Administrative duties are estimated at \$2,000, based on similar contract for Melebeck (Vermilion Parish coordinating attorney). Base contract pay includes \$42,700 for felony cases. We estimate the remaining \$580 is for felony arraignments.

<sup>g</sup> The normal base pay for felonies is \$42,700 and the attorney

Attorney	Parish	Case Categories	Total Contract Paid, 2009	Capital Fees	Base Contract Pay	Seniority <sup>b</sup>	Administrative Duties
R. Lasseigne <sup>j</sup>	Lafayette	Felony	\$51,200		\$42,700	\$8,500	
J. Rowe	Vermilion	Felony	\$49,700		\$42,700	\$7,000	
D. Kennison <sup>k</sup>	Lafayette	Felony	\$47,200		\$42,700	\$4,500	
T. Mose	Lafayette	Felony	\$45,200		\$42,700	\$2,500	
G. Duhon	Vermilion	Felony	\$44,200		\$42,700	\$1,500	
C. Beaner	Lafayette	Lafayette City	\$44,200		\$42,700	\$1,500	
R. Jones	Lafayette	Lafayette City	\$44,200		\$42,700	\$1,500	
J. Robinson	Lafayette	Felony	\$43,700		\$42,700	\$1,000	
M. Cloutier	Lafayette	Non-Support	\$42,500		\$35,500	\$7,000	
J. Nixon <sup>l</sup>	Vermilion	Dist. Pre-Indict., Non-Support, OCS; Abbeville & Kaplan City OCS	\$35,430		\$35,430	\$0	
M. Landry	Acadia	Crowley City OCS, Rayne City Misdemeanors, Juvenile	\$34,950		\$31,450	\$3,500	
T. Pierre	Lafayette	District Court DWI & IWC	\$34,000		\$29,500	\$4,500	
R. Harrington	Acadia	Misdemeanor, Juv. OCS, Non-Support, Revocations	\$33,080		\$27,580	\$5,500	
K. Gautreaux	Lafayette	Misdemeanor	\$29,000		\$26,500	\$2,500	
R. Mere	Lafayette	Misdemeanor	\$28,500		\$26,500	\$2,000	
C. Richard	Lafayette	Misdemeanor	\$28,500		\$26,500	\$2,000	
L. Williams	Lafayette	Misdemeanor	\$28,000		\$26,500	\$1,500	
J. Rosenzweig <sup>l</sup>	Vermilion	Kaplan City Misd. & Juv., Abbeville City OCS conflicts	\$26,100		\$26,100	\$0	
C. Larue	Lafayette	Felony Revocations, Drug Court	\$25,600		\$21,100	\$4,500	
C. Evans	Lafayette	Lafayette City Juvenile	\$24,900		\$23,400	\$1,500	
T. Dupont	Lafayette	Lafayette City Juvenile	\$23,400		\$23,400	\$0	
T. Gauthier <sup>m</sup>	Lafayette	Pre-Indictment, Habeas, Revocations	\$21,600				
J. Landry	Acadia	Rayne City OCS	\$7,750		\$6,250	\$1,500	
S. Privat <sup>n</sup>	Acadia	Misdemeanor, Juvenile, City Court(s)					
R. Jardell <sup>n</sup>	Lafayette	Pre-Indictment, Habeas, Revocations					

receives the maximum seniority pay of \$10,000. This leaves an extra \$500 that cannot be attributed.

<sup>h</sup> No contract provided for 2009. Figures are estimates based on Garrott's 2007 contract, and adjusted to 2009 pay levels of IDO attorneys handling similar case types.

<sup>i</sup> Base contract pay includes \$42,700 for felony cases, as he was originally contracted at the beginning of 2009. We estimate the remaining \$13,500 is for OCS cases.

<sup>j</sup> No contract provided for 2009, though he continues to serve as an IDO attorney. In 2008, his contract was for \$55,500 for felony representation. The 2009 figures assume the attorney handles the same case type as in 2007 & 2008.

<sup>k</sup> No contract provided for 2009, though he continues to serve as

an IDO attorney.

<sup>l</sup> Attorney not listed on 2007 IDO report. Therefore NLADA cannot estimate the "seniority," and not enough information to estimate the breakout of base fees for each category of case type being handled under the 2009 contract.

<sup>m</sup> 2009 contract provided, but we believe he left the office prior to our site visit and no longer holds this position. We believe he was replaced by Scott Privat early in 2009, who then was re-assigned to Acadia Parish [delete comma] and was replaced in Lafayette Parish by Remy Jardell at the time of the NLADA site visit.

<sup>n</sup> No 2009 contract provided. We have insufficient information to be able to estimate the attorney's level of pay.

of-pocket expenses, leaving whatever remains as the fee earned by the attorney. The IDO has no way of determining the amount of the fee that each contract attorney earns as a result of their contract, and thus cannot know whether the attorney is being paid a reasonable fee or whether the contract is oppressive or whether the contract amount is resulting in a boondoggle.

The use of flat-fee contracts by the 15th Judicial District IDO is even more worrisome, because the contract also allows attorneys to be retained by a client whom they were already appointed to represent. The contract provides:<sup>55</sup>

5.B. Should Counsel be approached by a client of The Program requesting to pay a private fee, Counsel shall advise The District Defender of the request for retainer, the terms of the potential retainer and whether in fact Counsel wishes to accept same. Counsel's retainer by an appointed client shall be subject to approval of The District Defender [sic] shall be reimbursed for any office expenses, cost or expenditures of any kind related to the case prior to the time Counsel was retained.

In a system such as this, where the attorney's income is capped but their work is not, and they are required to pay for all of their own overhead in serving as indigent defense counsel, and the contract lacks any provision to alter those circumstances, the attorney's own self-interest is in serious danger of subconsciously overriding their dedication to the needs of their clients.

## ii. Minimum Qualifications, Training, Accountability

### ***Guidance of National Standards, ABA Principles 6, 9, and 10***

All national standards, including ABA *Principle 6*, require attorneys representing indigent clients in criminal proceedings to have the appropriate experience to handle a case competently.<sup>56</sup> That is, policymakers should not assume that an attorney who is newly admitted to the bar is sufficiently skilled to handle every type of case or that even an experienced real estate lawyer would have the requisite skill to adequately defend a person accused of a serious sexual assault, for example. ABA *Principle 6* acknowledges that attorneys with basic skills can effectively handle cases that are less complicated and that carry less serious potential consequences. Significant training, mentoring, and supervision are needed, however, to foster the budding skills of even the most promising young attorney before allowing her to handle more complex cases.<sup>57</sup>

The systemic need to foster attorneys is the thrust of the call for on-going training encapsulated in ABA *Principle 9*. For example, new-attorney training is essential to cover

matters such as: how to interview a client; the level of investigation, legal research and other preparation necessary for a competent defense; trial tactics; relevant case law; and ethical obligations. Effective training includes a thorough introduction to the workings of the indigent defense system, the district attorney's office, the court system, and the probation and sheriff's departments, as well as any other corrections components. It makes use of role playing and other mock exercises and videotapes to record student work on required skills, such as direct and cross-examination and interviews (or mock interviews) of clients, which are then played back and critiqued by a more experienced attorney or supervisor.

As *Principle 9* indicates, training should be an on-going facet of a public defender agency. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields evolve. As the practice of law grows more complex each day, even the most skilled attorney practicing criminal law must undergo training to stay abreast of such continually changing fields as forensic sciences and police eye witness identification procedures, while also learning to recognize signs of mental illness or substance abuse in a client.<sup>58</sup> Such training should not be limited to theoretical knowledge. Defense practitioners also must gain practical trial experience by serving as co-counsel in a mentoring situation on a number of serious crimes, and/or having competently completed a number of trials on less serious cases, *before* accepting appointments on serious felonies.

The authority to decide whether or not an attorney has garnered the requisite experience and training to begin handling serious cases as first chair should be given to an experienced criminal defense lawyer who can review past case files and continue to supervise, or serve as co-counsel, as the newly qualified attorney begins defending her initial serious felony cases – as demanded by ABA *Principle 10*. Without supervision, attorneys are left to determine on their own what constitutes competent representation and will often fall short of that mark. To help attorneys, an effective performance plan should be developed – one that is much more than an evaluation form or process for monitoring compliance with standards – and should include: a) clear plan objectives;<sup>59</sup> b) specific performance guidelines;<sup>60</sup> c) specific tools and processes for assessing how people are performing relative to those expectations and what training or other support they need to meet performance expectations;<sup>61</sup> and d) specific processes for providing training, supervision, and other resources that are necessary to support performance success.

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### ABA Principle 6

**Defense counsel's ability, training, and experience match the complexity of the case.** Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.

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## ***Requirements of Act 307***

The Louisiana legislature wisely wove these principles of qualification, training, supervision, and accountability deeply into the fabric of the Louisiana Public Defender Act. First, they directed the LPDB to adopt all rules, standards and guidelines necessary in the areas of supervision, performance standards (appellate, capital, trial, juvenile, child in need of care), attorney qualifications, training, and accountability.<sup>62</sup> Second, they mandated by statute four high-level positions within the state office that are charged with ensuring these principles are carried out: the deputy public defender-director of training,<sup>63</sup> the deputy public defender-director of juvenile defender services;<sup>64</sup> the trial-level compliance officer;<sup>65</sup> and the juvenile justice compliance officer.<sup>66</sup> It is an explicit duty of the state staff to review, monitor, and assess the performance of all attorneys who provide counsel for indigent defendants.<sup>67</sup>

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## ***ABA Principle 9***

**Defense counsel is provided with and required to attend continuing legal education.** Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.

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The mandates of Act 307 and of national standards are not, however, being implemented in the 15th Judicial District IDO. Before addressing this in detail, we acknowledge that many of the defense attorneys in the IDO are very experienced, talented, and highly regarded attorneys. Approximately 15 of them have been on IDO contracts for 15 years or more. Yet the level of service provided by any individual attorney within the IDO is simply serendipitous and not the result of any plan by the IDO to ensure their ability to provide constitution-

ally required effective representation.

## ***Current Practice in the 15th Judicial District IDO***

The 15th Judicial District IDO does not have any written standards or policies for determining whether attorneys have sufficient qualifications to serve as counsel to indigent defendants. This is of particular concern in juvenile delinquency representation, as the attorneys contracted to represent juveniles handle both felonies and misdemeanors on behalf of their youthful clients. One IDO juvenile attorney began with the IDO in January of 2009, having never before served as a public defender or criminal defense attorney.

She had graduated law school in 2005, but evacuated from Louisiana following Hurricane Katrina and spent her time doing contract work for other attorneys, then she opened her own practice in 2008 after returning to Louisiana. Just three months after beginning with the IDO, she was appointed to defend a juvenile in an attempted second degree

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## ***ABA Principle 10***

**Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.** The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

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murder case without any co-counsel or assistance. This was her first ever felony case of any sort, and she was concerned. It was reported to NLADA that she contacted the office manager for the IDO to ask whether she should be handling this case and was told “yes, this is something you should do.”

Once an attorney is contracted to provide services through the IDO, they receive no further training or supervision. The only training requirement imposed by their contract is that they attend CLE as required by the Louisiana State Bar Association and obtain not less than half of the required CLE hours in criminal law related to their public defense work.<sup>68</sup> Each defender must pay for their tuition and any expenses they incur in connection with obtaining CLE, such as hotel and travel to out-of-town training, though they can be reimbursed up to \$300 for their CLE tuition.<sup>69</sup> By way of contrast, according to the local defender attorneys, all CLE training for prosecutors is paid for by the Office of the District Attorney and assistant district attorneys receive pay for their time spent in attending mandatory CLE.

Attorneys are expressly advised in their contracts that they will not be supervised:<sup>70</sup>

1.D. Representation provided by Counsel is not subject to detailed instruction from The Program as to how to achieve representation of the clients. However, The Program may establish general guidelines or may prohibit certain acts or practices of Counsel as it deems appropriate. In all aspects Counsel is a general contractor whose obligations [sic] to deliver legal representation to clients in accordance with the Constitutions of the United States and the State of Louisiana, Louisiana Law, the rules of ethics of the Louisiana State Court and the local rules of the 15th Judicial District Court.

The district defender advised the site team that he does not believe he needs to tell contract attorneys how to practice law. For quality assurance, he told us he primarily relies on feedback from clients and their complaints if any. He indicated that he occasionally goes to the courthouses to watch the attorneys in court, but at least two attorneys who work in Vermilion Parish reported that they had never seen him at the district courthouse there or at Abbeville City Court. Strikingly, the district defender said that he was not aware of any performance standards or policies issued by the LPDB, even though the *Trial Court Performance Standards* had been published in April 2009, a full five months prior to the site visit.

Our site visit happened to coincide with the first day on the job for a defense attorney new to the IDO. His agreement with the IDO<sup>71</sup> calls for him to provide representation at all pre-indictment proceedings and felony drug court revocations in Lafayette. He commented to our site team that there is “not a whole lot I can do, because they violated con-

ditions of probation.” Defending against those allegations was exactly what he had contracted with the IDO to do, but without guidance he seemed uncertain about how to do so.

One of the Vermilion IDO misdemeanor & juvenile attorneys began with the IDO in January 2009, having opened her practice during 2008. Though she graduated law school in 2005, she had never previously worked as a public defender. The only actual training she received from the IDO was on how to enter information into the database. She re-

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### Felony drug-case probation revocations in Lafayette

Every client who is facing revocation of probation on a drug-related felony charge in Lafayette will appear before a single judge for those revocation hearings. And every indigent client will be represented by a single IDO attorney who is assigned to handle those cases. This is not the attorney who represented the client during the case proper.

The IDO attorney receives the entire stack of case files for the revocation docket on the afternoon before it is to occur. This is the first time he has seen these files, and he has never met the clients. On the morning of the revocation docket, the judge sits on the bench, while the courtroom full of defendants and their family members wait for the defendant’s name to be called. One by one, each defendant is called up, but not to appear before the judge. The IDO attorney will take the client out into the main corridor and meet with him for literally only minutes to review the alleged probation violation charges. Then the IDO attorney and the client go into the jury deliberation room, where the prosecutor and probation officers are seated around the table.

The defendant, most often in shackles, sits at the head of the table. To his right is the prosecutor, and two seats away on the other side of the prosecutor is the IDO attorney. Throughout the docket observed by the NLADA site team, the IDO attorney said almost nothing. Clients spoke only to the prosecutor; clients’ family members spoke only to the prosecutor. Often the client and family members would unwittingly make matters worse by presenting incriminating facts, but the IDO attorney did not do anything to prevent this and he did not do anything to advocate on behalf of the clients.

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time in six capital murder prosecutions of juveniles. Despite the youth of the charged offenders, caselaw providing that the mentally handicapped cannot be subjected to the death penalty, and the various guilt and sentencing factors that implicate mental capacity/health in particular in cases of juveniles, the public defense attorney had never raised any issue of competency in any of those cases.

placed a defense attorney who was moving up to the Vermilion felony docket from Kaplan City Court misdemeanor & juvenile cases. During December 2008, she watched him handle each docket for one day before she took over; then in January after she took over the caseload, he came and watched her for two days – this was the entirety of the supervision she has received from the IDO. In Abbeville City Court OCS-parent cases (Office of Child Services cases, representing the parent), which she inherited from a different attorney,<sup>72</sup> she received files that “were a mess” and she spent dozens of hours updating and closing the files – boxes of them had been passed down from lawyer to lawyer without anyone systematically going through them.

An example of the ways in which even experienced defense attorneys can fail to raise appropriate issues, when they lack sufficient training, was provided by a prosecutor in Acadia Parish. He had been involved over

### iii. Prompt Appointment, Continuous Representation, Confidential Communications

#### ***Guidance of National Standards, ABA Principles 3, 7, and 4***

The third of the ABA's *Ten Principles* addresses the obligation of public defense systems to provide for prompt financial eligibility screening of defendants, toward the goal of early appointment of counsel. Standardized procedures for client eligibility screening serve the interests of uniformity and equality of treatment of defendants with limited resources. Situations in which individual courts and jurisdictions are free to define financial eligibility as they see fit – e.g., ranging from “absolutely destitute” to “inability to obtain adequate representation without substantial hardship,” with factors such as employment or ability to post bond considered disqualifying in some jurisdictions but not in others – have long been decried. The National Study Commission on Defense Services found in 1976 that such practices constitute a violation of both due process and equal protection.<sup>73</sup>

Requirements for prompt appointment of counsel are based on the constitutional imperative that the right to counsel attaches at “critical stages” occurring before trial, such as custodial interrogations,<sup>74</sup> lineups,<sup>75</sup> and preliminary hearings.<sup>76</sup> In 1991, the U.S. Supreme Court ruled that one critical stage – the probable cause determination – is constitutionally required to be conducted within 48 hours of arrest.<sup>77</sup> Prompt appointment of counsel is equally important in other aspects of defending a client. Valid legal challenges that could result in dismissal of a case should not be delayed for lack of counsel to identify, investigate, and raise them.

Most standards take requirements regarding early assignment of counsel beyond the constitutional minimum requirement, to be triggered by detention or request even where formal charges may not have been filed, in order to encourage early interviews, investigation, and resolution of cases, and to avoid discrimination between the outcomes of cases involving public defense clients and those clients who pay for their attorneys.<sup>78</sup> Just two years ago, the Supreme Court again emphasized the early attachment of the right to counsel in *Rothgery v. Gillespie County, Tex.*, \_\_\_ US. \_\_\_, 128 S.Ct. 2578 (2008), holding that a defendant's right to counsel attaches at the initiation of the adversarial process and without regard to when the prosecutor becomes involved.

Prompt appointment of counsel would not mean much if the client never saw the same attorney again. For this reason, ABA *Principle 7* demands that the same attorney continue to represent the client – whenever possible – throughout the life of the case.<sup>79</sup> Though it may seem intuitive to have an attorney work a case from beginning to end, many jurisdictions employ an assembly-line approach to justice in which a different attorney handles each separate part of a client's case (i.e., arraignment, pre-trial confer-

ences, trial, etc.). Standards on this subject note that the reasons for public defender offices to employ the assembly-line model are usually related to saving money and time.

Lawyers need only sit in one place all day long, receiving a stream of clients and files and then passing them on to another lawyer for the next stage, in the manner of an “assembly line.”<sup>80</sup> But standards uniformly and explicitly reject this approach to representation,<sup>81</sup> for very clear reasons: it inhibits the establishment of an attorney-client relationship; fosters in attorneys a lack of accountability and responsibility for the outcome of a case; increases the likelihood of omissions of necessary work as the case passes between attorneys; is not cost-effective; and is demoralizing to clients as they are re-interviewed by a parade of staff starting from scratch.<sup>82</sup>

Once a client has been deemed eligible for services and an attorney is appointed, *Principle 4* demands that the attorney be provided sufficient time and a confidential space to meet with the client.<sup>83</sup> As the *Principle* itself states, the purpose is “to ensure confidential communications” between attorney and client. This effectuates the individual attorney’s professional ethical obligation to preserve attorney-client confidences,<sup>84</sup> the breach of which is punishable by disciplinary action. It also fulfills the responsibility of the jurisdiction and the public defense system to provide a structure in which confiden-

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### ***ABA Principle 3***

**Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.** Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.

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### ***ABA Principle 7***

**The same attorney continuously represents the client until completion of the case.** Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

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tiality may be preserved<sup>85</sup> – an ethical duty that is perhaps nowhere more important than in public defense of persons charged with crimes, where liberty and even life are at stake and client mistrust of public defenders as paid agents of the state is high.<sup>86</sup>

### ***Requirements of Act 307***

In Act 307, the legislature paid careful attention to ensuring that these national standards were upheld. They charged the LPDB with adopting standards, guidelines, and rules as necessary to make certain that every indigent defendant throughout Louisiana is provided

with representation that is uniformly fair and consistent. And they specifically addressed these areas of eligibility for and appointment of counsel,<sup>87</sup> vertical representation,<sup>88</sup> and confidential attorney-client communications.<sup>89</sup>

### ***Current Practice in the 15th Judicial District IDO***

When a person is arrested in the 15th Judicial District and is unable to immediately make bail, they will be brought before a judge within 72 hours of arrest for a hearing to determine the amount of their bail, whether there was probable cause for the arrest if it was not effected on the basis of a warrant, and whether the defendant is requesting and entitled to appointment of counsel.<sup>90</sup> If a person is released from custody prior to requesting appointment of counsel, the determination of whether they desire and are entitled to appointment of counsel will occur when they come to court for arraignment following institution of prosecution.

There are not any defense attorneys present at any 72-hour hearings held in the 15th Judicial District. The district defender is firmly of the belief that attorneys are assigned in all three parishes to attend 72-hour proceedings. The judges who preside over the 72-hour hearings expressly told the site team that there are not any attorneys present, as did the IDO clerical staff and IDO attorneys. Appendix V, provided by the IDO in April 2010, shows that no attorney is assigned to or paid for the category of “Inst./72.” IDO clerical staff are present for the purpose of accepting applications from defendants whom the judges direct to apply for public counsel. Bail is set without any advocacy by a defense attorney and solely at the discretion of the presiding judge.

In Vermilion, the 72-hour hearings (at least for traffic and misdemeanor cases) are conducted by the judge without any prosecutors or defense attorneys present, and they are conducted by video, with the judge sitting in the courtroom and the defendants sitting in the jail. The IDO clerical staff person is present with the judge in the courtroom. The judge will ask each defendant whether they can afford to hire an attorney. If the defendant says no, then the judge refers the defendant to talk to the IDO clerical staff. The IDO is responsible for following up by going to the jail and obtaining the appropriate forms from the defendant. Each defendant who is requesting appointed counsel must pay a \$40 application fee up front. Similarly in Abbeville City Court, when a client appears for their 72-hour hearing, the judge will ask if they want a public defender. If so, the IDO clerical staff will have the defendant fill out an application on the spot, but again there are no actual defense attorneys present. In Acadia, 72-hour hearings are also conducted by video, with the judge and the IDO clerk present at the courthouse and the defendant at the jail.

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### ***ABA Principle 4***

**Defense counsel is provided sufficient time and a confidential space within which to meet with the client.** Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.

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## National Legal Aid & Defender Association

No matter what parish, defendants who are referred to the IDO are handed a memo that provides written information about bond reduction and habeas processes and representation by counsel.<sup>91</sup> There are variations between the parishes in the precise information contained in this memo. In Acadia Parish, the memo informs the individual that s/he will be represented by “an attorney with the Pre-Indictment Division” until such time as a bill of information is filed by the District Attorney’s office. This memo also tells the IDO clients that they are responsible for producing witnesses at any future bond reduction hearing, and that if no witnesses present on their behalf *there will be no bond reduction hearing*. In other words, the pre-indictment attorney will take no steps whatsoever to locate, identify, and secure the appearance of witnesses on behalf of the client in order to reduce their bond. Throughout the judicial district, clients will not actually meet the pre-indictment attorney until the date on which their bond reduction hearing is set to occur, if then.

The Lafayette Parish Sheriff said he would be willing to pay part of an IDO salary to have any IDO attorney come to the jail, review paperwork for detained pre-trial defendants, and in particular try to identify defendants with mental health problems to have them released from the jail. Because jail overcrowding is such a serious problem, he would like to have a judge, prosecutor, and defense attorney at the jail daily, reviewing bonds and determining who is appropriate for release.

After arrest, the District Attorney’s office then has varying periods of time from 45 to 150 days within which to institute prosecution, depending on the nature of the charge and whether the defendant is in or out of custody.<sup>92</sup> Arraignment on the charge upon which prosecution is instituted must generally occur within 30 days of the filing of the charges by the prosecutor.<sup>93</sup> As a practical matter, the site team was advised that in Lafayette arraignment typically occurs approximately two months after the date of arrest,<sup>94</sup> followed by a pretrial one to two months later, and then trial a month after that. One district judge said that the purpose of the pretrial is to ensure that the lawyer meets with the client prior to the trial date. In Vermilion, the pretrial is held on the day before trial. An Acadia judge advised that they do not have pretrials in that parish.

### *Eligibility to receive public counsel*

People who are arrested in the 15th Judicial District, and who are requesting appointed counsel at their 72-hour hearing, and who are unable to bond out of jail on their charge in advance of the IDO clerical staff making it to the jail to have them complete an application, will complete their financial *Application for Public Defender*<sup>95</sup> in advance of actual institution of prosecution against them. But most potential clients will complete this application when they come to court for arraignment on the bill of information or indictment. There are slight variations between the three parishes in the exact process



employed, but for purposes of example we describe what the site team observed during arraignments in Lafayette.

Arraignments in Lafayette all take place before Commissioner Frederick, and the pre-indictment attorney from the IDO appears on behalf of all presumptively indigent defendants during their arraignment. Defendants appear before Commissioner Frederick who asks them, among other things, whether they are requesting appointment of counsel. Commissioner Frederick advised the site team that the only people he does not refer to the public defenders are those being charged with violations of parish ordinances, like leash law violations. During the arraignment docket observed by the site team, everyone who asked for counsel was appointed to the IDO. The Commissioner directs the defendants who are seeking counsel to see the bailiff, and the pre-indictment attorney will hand them paperwork to take with them.

The bailiff is sitting by the door which leads from the arraignment courtroom to an adjacent courtroom, where the three IDO clerical assistants are sitting at tables awaiting the defendants. The bailiff tells each defendant to complete the application and then bring the form to one of the clerical assistants. A clerical assistant reviews the form with the defendant and guides the defendant through completing any missing information. The bailiff and the constant stream of other waiting defendants are all sitting less than 10 feet away, such that there is no confidentiality whatsoever. Each defendant is assessed a \$40 application fee at the time that they complete their application and are told to pay that fee at the Sheriff's office. The clerk hands them a *Defendant Information Sheet* and a green *\$40.00 Application Fee Notice*.<sup>96</sup> Significantly, defendants are not told whether they are eligible to receive appointed counsel. Instead, they are told that it will take approximately 10 business days to process their application and that they will receive a letter in the mail telling them whether they are eligible for an attorney and, if so, who that attorney will be.

After arraignments, the IDO clerical staff return to their office to process the applications. They have written instructions regarding the maximum income and the maximum funds available after expenses that presumably will render a defendant ineligible for appointed counsel.<sup>97</sup> The IDO generally represents anyone who says they are indigent and need a public lawyer. This is contrary to the legislative intent that requires screening to ensure that only those who are "financially unable to retain private counsel" are given a publicly-paid attorney.<sup>98</sup> Specifically, Act 307 provides uniform eligibility criteria to be applied throughout the state.<sup>99</sup>

### *Failure to provide counsel in misdemeanor cases*

The representation policies of the 15th Judicial District with regard to misdemeanors regularly violate the Sixth Amendment to the United States Constitution, as interpreted

by the Supreme Court in *Argersinger v. Hamlin*<sup>100</sup> and *Alabama v. Shelton*.<sup>101</sup> In *Argersinger*, the Court held that the Sixth Amendment requires a defendant to receive an attorney if faced with loss of liberty on any charge, no matter how minor.<sup>102</sup> From 1972 until 2002, in contradiction of the clear ruling of *Argersinger* that all misdemeanor defendants are entitled to counsel if they are going to be jailed for their offense, many jurisdictions throughout the country took the position that they did not have to provide an appointed attorney to indigent misdemeanor defendants who were going to be placed on probation with a suspended sentence. This led to the case of *Alabama v. Shelton*, 535 U.S. 654 (2002). Mr. Shelton was indigent and did not receive an attorney to defend him on his misdemeanor charge. He was convicted and was placed on probation with a suspended sentence. The United States Supreme Court clarified in *Shelton* that a suspended sentence cannot be imposed unless an indigent defendant is provided with an attorney during the prosecution on the charge – it is insufficient to wait until a probation revocation hearing to provide the defendant with a lawyer.<sup>103</sup> The Court held that, if the individual was not afforded counsel at the time of the original charge, the judge is foreclosed from incarcerating that individual for failing to comply with one or more of the conditions stemming from probation or a suspended sentence.<sup>104</sup>

A significant number of misdemeanors carry potential loss of liberty under Louisiana law and many misdemeanors carry mandatory jail time. As a result, under the Sixth Amendment counsel is required to be appointed for any person being prosecuted in such a case who cannot afford to hire their own attorney. The Rayne City Court judge and the Crowley City Court judge both advised that they do not appoint counsel in misdemeanor cases; instead, an IDO attorney is present and available merely to answer questions, should a defendant have any. In Abbeville City Court, the judge<sup>105</sup> will only appoint an attorney in a case where there is mandatory jail time or when repeat convictions can result in enhanced penalties (such as theft, possession of marijuana or drug paraphernalia, DUI, telephone harassment, simple battery on a police officer, stalking, and domestic abuse). In all other cases including those that carry the possibility of jail time as a sentence, the judge will not appoint counsel. The judge will ask the defendant if s/he has a lawyer and, if not, will advise the defendant that “you are entitled to hire a lawyer, but I’m not going to appoint one.”

The NLADA site team observed “Traffic Court” taking place in the Vermilion District Court. The following exchange occurred repeatedly:

Prosecutor:	<i>Calling out name of a defendant on that day’s docket.</i>
Defendant:	Here.
Prosecutor:	You have an attorney?
Defendant:	No.



Prosecutor:            You getting an attorney?  
Defendant:            No.  
Prosecutor:            Come on up.

The prosecutor would then talk to the defendant, presumably about their case. While it was impossible for the site team to know whether the defendants who were called faced possible loss of liberty on their charges, given that the traffic court docket that day included DUI offenses for which the judge later accepted guilty pleas, it seems highly likely that at least some of the defendants were entitled to representation by counsel. Later during the same docket, the judge took the bench and inquired of everyone in the courtroom at large as to whether there was anyone present who was: charged with a DUI and wanting to plead guilty or no contest, and who did not have any attorney, and who did not want an attorney. Defendants who responded affirmatively to the judge's inquiry were called up and given a 3-page form by the prosecutor, and subsequently entered a guilty plea. No further efforts were made to ensure that defendants understood they were waiving their right to an attorney.

Despite the clear mandates of *Argersinger* and *Shelton*, defendants are in fact losing their liberty without representation by counsel. For IDO clients who are placed on probation for a misdemeanor, they simply do not receive representation after their original probated sentence is imposed. Both the IDO office manager and the supervising officer of the 15th JDC's Misdemeanor Probation Division advised the NLADA site team that clients are not entitled to public defender representation for misdemeanor probation revocations. One district judge expressed concern about the manner in which probation revocation hearings are conducted in misdemeanor cases in Lafayette. He had recently spent a week presiding over these revocation hearings, and there were no defense attorneys appearing on behalf of any of the defendants. The prosecutor was regularly asking the judge to revoke the defendants' probation and sentence them to five months in jail, all without the defendants being represented by counsel.

### *Delay in appointment of counsel and horizontal representation*

In the 15th Judicial District, an indigent client may be represented by as many as three or four different attorneys during the course of a single case – typically known as “horizontal representation” and universally decried by all national standards<sup>106</sup> and Act 307.

Whether a potential client is requesting appointment of counsel while in jail after arrest and unable to make bail, or whether the client is out of custody and requesting appointment of counsel at their arraignment on charges after institution of prosecution, in the 15th Judicial District they will initially be represented by a “pre-indictment/bond reduction” attorney. The IDO provides a “pre-indictment” attorney in each parish.<sup>107</sup>

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For IDO clients who are not able to make bail, the pre-indictment attorney will represent them at a bond reduction hearing, which is typically held within two weeks of their arrest. This hearing is the very first time that any IDO client will actually see an IDO attorney. At the same time, however, the client will be told that this attorney only represents them on the matter at hand – attempting to get their bond reduced – and not for the entirety of their defense.

The pre-indictment attorney will also appear at arraignment following institution of prosecution, so the client will still not meet their actual trial attorney. At the time of the site team evaluation, the pre-indictment attorney in Lafayette was serving his first day on the job as an IDO attorney. He did not meet or talk with any of the clients he was representing that morning. At arraignments, he: entered a plea of not guilty on behalf of the client; waived formal reading of the charges against the client; and requested 30 days within which the eventually appointed defense attorney could file any necessary pre-trial motions. As everyone throughout the system informed the NLADA site team, there is no real representation provided to any indigent defendant until after institution of prosecution and arraignment, because the real trial lawyer is not appointed until after arraignment on the charge. Several judges expressed concern, noting that important defenses may be lost as a result of the delay in the defense attorney beginning preparation of the defense case. One judge observed that, while a retained attorney will begin investigating a case and negotiating for dismissal or a plea early on and before institution of prosecution, all of this time is lost for an indigent client because there is no investigation or negotiation until after arraignment.

The IDO clerical staff determine which attorney will be appointed to represent which defendant, after they return to their offices following the arraignment docket and process all of the financial applications they have received. Staff check the database to determine whether the client has previously been represented by an IDO attorney. If the charging instrument contains the name of co-defendants or a victim, staff will also check the database for these names, in an effort to avoid conflicts. Then they assign the case to an IDO trial attorney by rotating through the list of attorneys contracted to handle the type of case in the parish.<sup>108</sup> The only exception is for capital murder cases, where the district defender makes the decision as to which attorney will be appointed next.<sup>109</sup> The IDO staff prepare a letter to the client, enclosing a “Notice of Appointment” that names their attorney (also mailed to the court, the prosecutor, and the IDO attorney) and advising them of the recoupment fee they are being assessed.<sup>110</sup>

Typically, both the client and the IDO trial attorney who will be representing the client following arraignment receive notice of the appointment within 10 business days of the arraignment. In the meantime, the pre-indictment attorney’s duties on behalf of the client are complete. Until a client receives this letter, the client does not know the identity of the attorney who will represent her. One or two weeks after the arraignment,

the client may receive a letter or phone call from her attorney asking her to set up an appointment. And if a single client is charged with both a felony and a misdemeanor, even arising out of a single course of conduct, the client will have two separate lawyers on the charges.

The IDO attorneys who contract to provide juvenile representation handle all juvenile cases, whether felony or misdemeanor (for adults, there are felony attorneys and there are misdemeanor attorneys). But the juvenile defenders do not follow a case if the juvenile is transferred from juvenile to adult court. In that situation, the case is reassigned to an adult felony defender.

Under the IDO system, the duties of the trial attorney end at sentencing, even for those clients who are placed on probation, and even for those clients for whom imposition of sentence is deferred pursuant to La. C.Cr.P. art. 893(D). For clients of the IDO who are placed on felony probation and brought back to court later on allegations that they have violated the conditions of their probation, they are assigned yet another attorney who is contracted to the IDO to handle revocations. In Lafayette, a single judge is responsible for hearing all revocations of probation on felony drug cases. He advised that he gets so many revocation hearings that court can last long into the night, so he asked for and received a single IDO attorney to represent defendants on revocations in his court (the same attorney who serves as the pre-indictment attorney for Lafayette). Another attorney handles all revocations in all other courts in Lafayette. The IDO attorney receives a massive stack of case files on the day before the revocation hearings are held – the first notice the attorney receives as to who they will be representing in court. The attorney then meets each and all of the clients in the courthouse corridors on the day of their probation revocation hearing, virtually ensuring that the attorney cannot provide effective representation.

### Conflicts

The IDO does not have any method of determining whether an IDO attorney has a conflict of interest arising out of the attorney's private caseload. And generally, the attorney cannot determine the existence of a conflict until the attorney receives discovery. Because the trial attorney is not appointed in the first instance until 10 to 15 days following arraignment, and because discovery is typically not received until approximately 30 days after that, it is often the case that an attorney's conflict in representing the client is not discovered until several months following the date of arrest. This necessitates the appointment of new counsel, and results in further delays before an IDO client will ever meet the attorney who will actually defend them.<sup>a</sup>

<sup>a</sup> The "Attorney Conflict Form" and "Notice of Reassignment of Counsel" form are attached as Appendix O. When an attorney discovers that they have a conflict, they complete the "Attorney Conflict Form" and submit it to the IDO office in their parish. The IDO *clerical staff* approves or disapproves the conflict. If approved, the IDO clerical staff will prepare and file a "Notice of Reassignment of Appointment of Counsel" sending a copy to the court, the prosecutor, the withdrawing and substituting IDO attorneys, and the client.

### *Lack of Attorney-Client Communications*

The majority of the judges indicated that the IDO attorneys do not communicate well with their clients – this was the judges’ greatest complaint about the IDO attorneys.

They uniformly expressed that the large caseloads carried by these attorneys prevent

them from pursuing meetings with their clients. As a result, the lawyers end up meeting with their clients at the courthouse on dates when cases are set for hearing or trial.

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## Representing Parents in CINC cases

The NLADA site team observed Child in Need of Care (CINC) cases in Vermilion parish. IDO attorneys represent both the parents and the child in CINC matters – there are 3 IDO attorneys available: one for each parent and one for the child – and these cases involve parents facing the loss of custody of their children. Throughout the proceedings, the three IDO attorneys appeared to do nothing more than process cases through the system and most every client was leaving the courtroom in tears. A member of the site team went to the hallway and began talking to each client as they left the courtroom. He asked: “Did you speak to your lawyer before today? Did you attempt to contact your lawyer before today? How long before your court appearance today was it when you first talked to your lawyer?” Each and every client that day said that they had met their attorney for the first time in the courtroom on that very day just before their case was called.

One client told what had happened to her. She had tried calling her attorney well before the court date, but had never been able to reach nor received a return call from the lawyer. She took it upon herself to prepare a large poster board with photos of her daughter at various points in her young life, to try to demonstrate to the judge that her daughter was happy living with her. When her case was called on the docket that day, her attorney told her that she could not present her poster to the judge, saying “there’s no time for that.” The attorney then agreed, against the wishes of the client, to move the case toward termination of her parental rights.

A social worker supervisor who was in court that day confirmed that none of the clients in the courtroom had spoken to their lawyers before that day. A second social worker said that it was normal for the IDO attorneys to talk to their clients for the first time at court, and that she had never seen a contested hearing during the eight months she had been in the parish.

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The IDO attorneys themselves almost all said that they will send a letter to an out-of-custody client requesting that the client call to set up an appointment to meet. But if that meeting does not take place – for whatever reason – the attorney will not take any other steps at all to contact the client. Instead, they will meet their client for the first time at the courthouse on the date of either the pre-trial or the trial. The attorneys did not evidence any concern with this “meet ‘em and plead ‘em” approach to representation. They did say, however, that the judges get upset if a client is then disputing the allegations, so that the case has to be reset.

Defense attorneys appearing with juvenile clients in Vermilion Parish never stood with their client before the judge when being observed by the site team, but instead remained seated at counsel table, even while the judge conducted intensive colloquies with the juvenile defendants and often

their parent. In one instance, a young man was before the judge to enter an admission to a delinquent act, and both of his parents were present with him. As the judge enquired whether he understood what he was doing, the defendant seemed confused and was not

able to explain his understanding. Eventually, as the judge explained further the rights that he would be giving up by entering an admission, the young man declared that he wanted to fight the charge. And that was the end of any plea agreement he had been offered. Perhaps the young man simply changed his mind, but it is equally possible that the public defender had not fully explained to him what would occur during the plea colloquy and the ramifications of entering an admission. In any event, his counsel was assuredly not standing beside him and answering questions that arose during his court appearance.

There are no private confidential meeting places at the Crowley City Courthouse. And there is no place designated at the courthouse where IDO attorneys can meet confidentially with their clients. Likewise, there is no private room or area for attorneys to meet with their clients at the Abbeville City Courthouse. The IDO attorneys generally discuss plea offers and other matters with clients while the court is on break, pulling them aside “here and there” for these attorney-client discussions.

The Lafayette Parish jail has two face-to-face attorney client meeting rooms and attorneys can visit with their clients at the jail at any time, 24 hours a day, 7 days a week, without restriction; though sheriff’s department personnel advised that they do not have many IDO attorneys coming to the jail to meet with their clients. In addition, every one of the housing pods has at least three “IDO telephones” that detained defendants can use to contact their appointed attorney free of charge. A significant number of the IDO attorneys said they do not feel “safe” at the Lafayette Parish jail, because there are often not deputies nearby. This is a fairly unusual complaint to hear from criminal defense attorneys. The Acadia Parish jail personnel similarly advised that attorneys rarely visit the

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### Representing Children

A young girl appeared before the judge on a truancy matter. She and her mother stood at the microphone in the center of the courtroom before the judge, while their IDO attorneys remained seated at counsel table behind them. The judge struggled for several minutes to help the girl understand the allegations against her and her options. “The prosecutor is saying that you haven’t been attending school. Do you understand?” The child nodded her head, yes. “You have three choices. If you want to fight the charge, you can ask for a trial. You can admit it, and forego a trial. Or you can plead no contest. Do you understand those options?” She shook her head, no. The judge tried asking the questions in a few different ways, to no avail. It quickly became clear to our site team that the child had some sort of mental impairment. Yet her IDO attorney did *nothing* to counsel her, advise her, or advocate on her behalf.

Eventually the judge said to her: “You’ve been here to see me before, haven’t you? Do you remember coming to talk to me before?” Yes, she said. “Do you remember that I told you then you need to go to school?” Yes, she said. “So why haven’t you been going to school?” asked the judge. The girl stood silently and began to cry. A little more gently, the judge continued: “Is there something happening at school that makes you not want to go?” Finally, the girl said through her tears, “The girls at school make fun of me because I’m fat.” The judge finally realized there was no way he could proceed, so he turned his attention to the IDO attorney, saying “you have more work to do.”

Later that day, one of the IDO attorneys we had observed in the morning lamented that the docket for that day would continue into the afternoon. She said: “You know we would have been out of there hours ago. It’s only because you’re here that we aren’t. The judge is showing off because you’re sitting in the courtroom, watching.”

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## National Legal Aid & Defender Association

jail, estimating 2 or 3 attorney visits a week counting both public and private attorneys. The attorney-client visitation room is a *tiny* room, with 2 chairs, a glass window, and a door, located just off of the family visitation room.

## B. Caseloads, Workloads, and Workflow Impediments

### i. Workload

#### *Guidance of National Standards, ABA Principle 5*

If it were possible to evaluate the overall health of a jurisdiction's indigent defense system by a single criterion, the establishment of reasonable workload controls<sup>111</sup> might be the most important benchmark of an effective system. An adequate indigent defense program must have binding workload standards for the system to function, because public defenders do not generate their own work. Public defender workload is determined, at the outset, by a convergence of decisions made by other governmental agencies and beyond the control of the indigent defense providers. The legislature may criminalize additional behaviors or increase funding for new police positions that lead to increased arrests. As opposed to district attorneys who can control their own caseload by dismissing marginal cases or diverting cases out of the formal criminal justice setting or offering better plea deals, public defense attorneys are assigned their caseload by the court and are ethically bound to provide the same uniform-level of service to each of their clients.

Workload controls ensure that public defenders are able to spend a reasonable amount of time fulfilling the parameters of adequate attorney performance,<sup>112</sup> including: meeting and interviewing a client; preparing and filing necessary motions;<sup>113</sup> receiving and reviewing responses to motions; conducting factual investigation, including locating and interviewing witnesses, locating and obtaining documents, locating and examining physical evidence; performing legal research; conducting motion hearings; engaging in plea negotiations with the state; conducting status conferences with the judge and prosecutor; preparing for and conducting trials; and sentencing preparation in cases where there is a guilty plea or conviction after trial.

Restricting the number of cases an attorney can reasonably handle has benefits beyond the impact on an individual client's life. For example, the overwhelming percentage of criminal cases in this country requires public defenders.<sup>114</sup> Therefore, the failure to adequately control workload will result in too few lawyers handling too many cases in almost every criminal court jurisdiction — leading to a burgeoning backlog of unresolved cases. The growing backlog means people waiting for their day in court fill local jails at taxpayers' expense. Forcing public defenders to handle too many cases often leads to lapses in necessary legal preparations. Failing to do the trial right the first time results in endless appeals on the back end — delaying justice to victims and defendants alike — and ever-increasing criminal justice expenditures. And, when an innocent person is sent to



jail as a result of public defenders not having the time, tools, or training to effectively advocate for their clients, the true perpetrator of the crime remains free to victimize others and put public safety in jeopardy.

The National Advisory Commission (NAC) on Criminal Justice Standards and Goals first developed numerical caseload limits in 1973 under the auspices of the U.S. Department of Justice. With modifications in some jurisdictions, those caseload limits have been widely adopted and proven quite durable in the intervening three decades.<sup>115</sup> NAC Standard 13.12 on Courts states: “The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.”<sup>116</sup> What this means is that an attorney who handles only felony cases should handle no more than 150 such cases in a single year and nothing else.

ABA’s *Principle 5* states unequivocally that defense counsel’s workload must be “controlled to permit the rendering of quality representation” and that “counsel is obligated to decline appointments” when caseload limitations are breached. *Principle 5* supports the NAC standards with their instruction that caseloads should “under no circumstances exceed” these numerical limits.<sup>117</sup>

In May 2006, the ABA’s Standing Committee on Ethics and Professional Responsibility further reinforced this imperative with its *Formal Opinion 06-441*. The ABA ethics opinion observes: “[a]ll lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently.”<sup>118</sup> Both the trial advocate and the supervising attorney with managerial control over an advocate’s workload are equally bound by the ethical responsibility to refuse any new clients if the trial advocate’s ability to provide competent and diligent representation to each and every one of her clients would be compromised by the additional work. Should the problem of an excessive workload not be resolved by refusing to accept new clients, *Formal Opinion 06-441* requires the attorney to move “to withdraw as counsel in existing cases to the extent necessary to bring the workload down to a manageable level, while at all times attempting to limit the prejudice to any client from whose case the lawyer has withdrawn.” In August 2009, the ABA again affirmed the NAC standards when the House of Delegates approved *Eight Guidelines of Public Defense Related to Excessive Workload* and its statement “[n]ational caseload standards should in no event be exceeded.”<sup>119</sup>



### ***Requirements of Act 307***

Under Act 307, the LPDB is required to “make an annual report to the legislature regarding the state of . . . public defender services it regulates. . . . include[ing] at a minimum . . . comprehensive workload data.”<sup>120</sup> The LPDB is also required to adopt standards, guidelines, and rules where necessary regarding data collection and reporting, workloads based on case weighting, and conflicts, among other things.<sup>121</sup>

### ***Current Practice in the 15th Judicial District IDO***

The IDO does not have any written standards or guidelines regarding the caseloads or workloads that can appropriately be carried by the IDO contract attorneys. The district defender advises that each felony attorney in the system probably had approximately 100 open cases at any one time, and that there is an office policy of no more than 150 felony files per attorney at any one time. He says that he is able to access the caseload data for each attorney to see their file count and ensure they are not overloaded.

Judges throughout the 15th Judicial District lamented that the large caseloads carried by the IDO attorneys prevent them from spending sufficient time meeting with their clients and result in the attorneys meeting with their clients at the courthouse on the day of court. One Vermilion district judge thinks that both the prosecutors and the defense attorneys have workloads that are too high.

NLADA requested the IDO to provide caseload information for each of the IDO attorneys for 2007, 2008, and 2009. We received caseload information from both the IDO and the LPDB in many forms showing the month-by-month appointment of cases to each IDO attorney during the 2008-2009 fiscal year, which ran from July 1, 2008 through June 30, 2009.<sup>122</sup> From that information, NLADA prepared a spreadsheet of caseloads for all IDO attorneys that shows the parish in which they work, the type of cases they handle, and the extent to which their IDO caseload, before factoring in their private caseload, is below or above national caseload standards.<sup>123</sup>

NLADA concluded that the caseload data is under-reported. For example, IDO attorneys advised that, throughout the judicial district, bail reduction cases and pre-indictment cases are not entered into the database and so are not counted. As another example, we were told that the Abbeville City Court system is “a mess.” Cases “pop up at the last

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### ***ABA Principle 5***

**Defense counsel’s workload is controlled to permit the rendering of quality representation.** Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.

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minute” that the IDO attorneys did not know about. The attorneys do not receive dockets in advance, and the court appoints them to cases but then often does not send the appropriate information to the IDO, so that the IDO does not consider the attorneys to have been “appointed.” Similarly, we have concerns as to whether probation revocation cases are being properly and fully counted, because at least in Lafayette Parish the attorneys do not receive dockets in advance, and so the IDO may not be fully aware of each probation revocation case that an IDO attorney handles.

Despite Act 307 having adopted a uniform definition of a “case”<sup>124</sup> and established requirements that every district use this definition in making their annual caseload reports to the LPDB,<sup>125</sup> this statutory definition is not being used by the IDO to count cases. Instead, each IDO attorney enters their case information into the database according to their best understanding about how they are to do that and with limited training. Overall, IDO attorneys appear to be “counting cases” in whatever manner the prosecutor in their parish uses to charge cases – meaning the IDO attorneys count docket numbers.

Even a cursory review of this incomplete and under-reported data paints a portrait of overworked attorneys in the 15th JDC. Just looking at the self-reported numbers for cases during the 12-month fiscal year shows that 44 percent of felony attorneys (11 of 25) exceeded the national standard for felony cases handled (150 cases). But the situation is much worse. These are simply the number of cases assigned during the 12-month fiscal year. Surely, a certain number of cases assigned during the previous year were still open and rolled over into this time period. And, though some of the cases opened during this 12-month fiscal year were disposed in the same fiscal year, some would have still been open during the following year. National standards refer to any case handled in a given year (number of cases open at the start of a year plus new assignments).

Though there are no national workload standards for capital cases, the commentary to the ABA *Death Penalty Guideline 6.1* notes: “In terms of actual numbers of hours invested in the defense of capital cases, recent studies indicate that several thousand hours are typically required to provide appropriate representation. For example, an in-depth examination of federal capital trials from 1990 to 1997 conducted on behalf of the Judicial Conference of the United States found that the total attorney hours per representation in capital cases that actually proceeded to trial averaged 1,889.” This has generally been interpreted to say that a death-certified attorney should handle no more than three such cases a year. In other jurisdictions, it is well settled that defense attorneys may only work on one trial level capital case at one time. In Washington State, by court rule, “[b]oth counsel at trial must have five years’ experience in the practice of criminal law, be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case.”<sup>126</sup> For example, in King County, Washington (Seattle), by contract with the county, a de-

fender office that had 32 open cases would have 64 attorneys working on those cases.

Therefore, to the extent that any of the reported assigned felony cases are capital cases, the caseload situation only worsens. The IDO advises that there is an office policy that no capital attorney should have more than two capital files at any time. Presumably this would be two death penalty cases out of the 150 felony cases that the IDO policy allows – or nearly double the caseload allowed under national standards. The 15th Judicial District is an active death penalty jurisdiction and, as of June 30, 2009, LPDB reported to NLADA that there were 13 active capital cases pending.<sup>127</sup> For example, Randal McCann had three death certified cases out of his 121 felony assignments, and so his IDO workload is actually 180 percent of what a full-time attorney should be handling.

The picture in misdemeanor and juvenile delinquency cases is no better. There, 70 percent (7 of 10)<sup>128</sup> of the IDO attorneys exceed national standards before factoring in their private cases and IDO cases pending at the start of the year. National standards for juvenile delinquency cases state that an attorney should handle no more than 200 such cases per year. Both of the attorneys handling only juvenile delinquency cases are at roughly double the national standard. Attorneys handling exclusively misdemeanor cases (national standard of 400 per year) fair better, with all three under the national standard. But those attorneys handling mixed misdemeanor and delinquency cases all exceed the national standard for misdemeanors alone, even though the addition of delinquency cases

## Felony Appointments, FY08-09

Attorney	Parish	Contract Case Type	Total Assigned Cases	% of Standard
Doga	Acadia	Felony	147	98%
Hayes	Acadia	Felony	121	81%
LeJeune	Acadia	Felony	138	92%
Nickel	Acadia	Felony	146	97%
Stefanski	Acadia	Felony	131	87%
Amos	Lafayette	Felony	140	93%
Dist. Defender	Lafayette	Felony	116	77%
Block	Lafayette	Felony	117	78%
Dixon	Lafayette	Felony	135	90%
Garrett	Lafayette	Felony	178	119%
Kennison	Lafayette	Felony	225	150%
Lasseigne	Lafayette	Felony	158	105%
McCann	Lafayette	Felony	121	81%
Mose	Lafayette	Felony	185	123%
Neumann	Lafayette	Felony	176	117%
Piccione	Lafayette	Felony	167	111%
Register	Lafayette	Felony	160	107%
Robinson	Lafayette	Felony	429	286%
Duhon	Vermilion	Felony	168	112%
Garrot	Vermilion	Felony	152	101%
Guidry	Vermilion	Felony	116	77%
Melebeck	Vermilion	Felony	101	67%
Rowe	Vermilion	Felony	130	87%
Thomas	Vermilion	Felony	115	77%
Veazey	Vermilion	Felony	152	101%

to their overall caseload should drive down the number of cases they can competently handle.

And, all of this excessive workload is *before private cases are factored in*. Each of the defense attorneys contracted to the IDO work out of their own private law offices, bear all overhead expenses, and are expressly allowed to maintain a private practice caseload in addition to their IDO responsibilities.<sup>129</sup>

Specifically, the contract provides that the attorneys “may accept private clients in any field of law, provided that Counsel will not maintain a caseload which is excessive or impairs Counsel’s ability to adequately represent clients of The Program.” The IDO does not make any effort, however, to monitor the private caseloads of the attorneys in order to assure compliance with this provision.

One last matter bears mentioning. The workload of the 15th Judicial District is not disbursed evenly among the IDO attorneys. NLADA does not believe this is intentional on the part of the IDO, and in fact found that the assignment of cases to attorneys within the system appears to be occurring on a rotational basis intended to evenly distribute the cases. But because each attorney handles only a certain type of case and only for one parish within the 15th JDC, the method of allocating cases simply does not distribute the workload evenly. The caseload distribution for all IDO attorneys during the 12-month period from July 1, 2008 through June 30, 2009 shows that the workloads of IDO attorneys (based on national caseload standards) range from a low of 49 percent to a high of 286 percent.<sup>130</sup> Of the 44 IDO attorneys who were assigned cases throughout the 2008-2009 fiscal year, 21 of those attorneys were carrying IDO caseloads that are in excess of national standards, before factoring in their private retained client caseloads.

## *Conflicts between clients*

The district defender estimates that approximately 90 percent of the criminal defense in the district is provided by the IDO. He believes that he could not get the caliber of attorneys he has now under a full-time employment system. Additionally, he believes that the cost to the system would be greater under a full-time staffed office, because conflicts

## Misdemeanor and Juvenile Appointments, FY08-09

Attorney	Parish	Contract Case Type	Total Assigned Cases	% of Standard
Dangerfield	Lafayette	Juv. Delinquency	363	182%
Neumann	Lafayette	Juv. Delinquency	409	205%
Mere	Lafayette	Misdemeanor	294	74%
Richard	Lafayette	Misdemeanor	299	75%
Williams	Lafayette	Misdemeanor	297	74%
Broussard	Vermilion	Misd./Juv.	711	178%
Guidry	Vermilion	Misd./Juv.	615	154%
Harrington	Acadia	Misd./Juv.	548	137%
Howie	Acadia	Misd./Juv.	800	200%
Landry	Acadia	Misd./Juv.	545	136%

would have to be assigned out to other attorneys; under a contract system he believes that is avoided.

The IDO does not have any written policies or guidelines regarding when an attorney has a “conflict” such that a case or client should be transferred to another IDO attorney (see text and side bar, page 35). Information provided by judges, prosecutors, and IDO attorneys during interviews causes serious concern as to whether conflicts are being appropriately identified and addressed. For example, in a misdemeanor brought to the attention of the site team, a single attorney had been designated to represent two code-defendants in a single case. The two defendants had been involved in a fight with each other. Rather than appointing separate attorneys to represent each of the defendants, instead one defendant was prosecuted first and then a month later the second defendant was prosecuted, with each of them represented by the same attorney. The criminal justice system in the 15th Judicial District seemed to believe that the delay in prosecuting the second defendant somehow cured the attorney’s conflict of interest.

In another situation, there was a significant push on truancy cases in the Vermilion courts in early 2009. In these truancy cases, both the children and their parents were defendants in the cases. A single attorney was designated to represent both the child and the parent in each case. The Abbeville City Court judge quite properly believed this was a conflict of interest. The IDO attorney contacted the office administrator and was told that there was no conflict of interest in the attorney representing both the child and the parent. Apparently this decision by the non-attorney office manager was sufficient to override the concerns of both the judge and the IDO attorney with regard to whether a conflict of interest existed and should be addressed.

### *Willingness to file motions*

The 15th Judicial District has a single District Attorney’s Office that handles all prosecutions in the courts throughout the three parishes of the district. The NLADA site team received varying renditions about whether and how the prosecution policies vary among the three parishes. For example, it was represented to the site team that the prosecutors in both Lafayette and Acadia courts provide “open file discovery,” while prosecutors in Vermilion courts do not. Yet a Vermilion district judge advised that there is in fact open file discovery in Vermilion.

An Acadia parish district judge described how this works in practice, explaining that the prosecutor will give the defense attorney a copy of a file, saying “Here is what I have, whether you are entitled to it or not.” But, this seems to be contingent upon the defense attorney *not* filing any written motions in the case, at least prior to receiving whatever the prosecutor sees fit to provide. As the judge went on to explain, the prosecutor is saying in essence, “I will show you my file. But if you make me answer written motions be-

fore we even know whether we really have a case, then I will stop providing open file discovery.” Given that under Louisiana law issues are only reserved for appellate review if they are raised by written motion or an oral objection made in open court,<sup>131</sup> the failure of defense counsel to timely file written pretrial motions may forever waive a defendant’s right to object. Open file discovery as practiced in the 15th Judicial District may be convenient for the defense attorneys and the prosecutors, but it does not appear to protect the rights of indigent clients. One district judge observed that very few written motions are filed, only very occasionally are any hearings held, and the “evidence” often consists of the prosecutor and defense attorney providing to him the police report and asking him to rule based on the “facts” as set out in that police report.

A Vermilion district judge told NLADA “open file discovery” is the policy in the courts there. He also advised that no motions are *ever* filed for further discovery and that he had never heard anyone argue that any additional discovery was needed.

### *Conflicts arising out of recoupment policies*

All persons seeking to have counsel appointed must pay a \$40 application fee at the time they apply. This fee can be waived by either the judge or the IDO. The IDO assumes that in-custody defendants cannot afford to pay the fee. For all out-of-custody defendants, the fee is assessed uniformly.

In addition to the application fee, certain indigent defendants are also required to make a payment to partially defray the cost of their appointed counsel. The decision about which clients will be assessed a fee does not, however, have anything to do with the financial ability of the client to pay the fee. We were told that IDO clients who are found not guilty or against whom the charges are dismissed are not required to make any payment, yet a sample *Notice of Appointment* letter we were provided told the client they were to pay \$350 for their attorney *before* they had even appeared for pre-trial and certainly before conviction. IDO clients who are incarcerated are also not assessed any fee. Arbitrarily, only and all of those IDO clients who are placed on probation (both misdemeanor and felony) are assessed this recoupment fee, the payment of which is then made a condition of their probation. In other words, the IDO attorneys are actively involved in negotiating for their own clients to be forced to pay for their services as part of negotiating plea deals to stay out of jail.

The amount that an IDO client will be required to pay in recoupment is based solely on whether the case is a misdemeanor or a felony, and again bears no relationship to the ability of the client to pay the fee, nor to the time spent by the attorney on the client’s case.<sup>132</sup> In misdemeanor cases clients are ordered to pay a minimum of \$200, and in felony cases clients are ordered to pay a minimum of \$350. The office manager estimates that 90 percent of all IDO clients are assessed these fees and that, of those, approximately 50 percent actually pay some portion if not all of the assessed fee.



As stated, these fees are assessed as a condition of probation. If a client fails to pay, their probation can be revoked and they can be remanded to prison or jail. The IDO advises that there is an office policy directing the IDO attorneys to waive the IDO fees if the failure to pay the fee is the basis to revoke a client's probation. Such a policy could only be carried out, however, if IDO attorney were representing every client in every probation revocation proceeding, and they are not. According to the misdemeanor probation supervisor, it is the policy of the Misdemeanor Probation Department that all conditions of probation must be met within the first 6 months of probation, even where a defendant is placed on probation for longer. When asked point-blank, the supervisor said: "Failure to pay IDO fees is a revocable violation."<sup>133</sup> And as previously explained, defendants placed on probation for misdemeanors do not receive appointed counsel at any hearing held on an alleged violation of their misdemeanor probation. Appendix V, provided by the IDO in April 2010, shows that no attorney was assigned to and no funds were allocated for misdemeanor revocation representation.

The district defender advised the site team, regarding the operational budget of the IDO, that approximately \$700,000 comes from the state and \$700,000 from the city, with the balance having to be recouped through alternative revenue sources. Though this isn't quite accurate,<sup>134</sup> the implication is obvious: the state funds from LPDB are not enough – in reality dwarfed by the local dollars – and any revenue the IDO is able to raise on its own can supplement the office's budget, 85 percent of which is spent directly on the contract amounts paid to the IDO attorneys.<sup>135</sup> One veteran defender said: "There is encouragement to assess those fees [recoupment fees on plea deals], but I don't because I'm secure [in my position]." The contract attorneys, therefore, have a direct financial incentive to press their clients to accept pleas that double as cost recovery measures for the office. The office in turn distributes those funds back out to the attorneys. And should a client fail to pay those assessments, she can find her probation revoked. Put another way, the attorneys have a financial disincentive to bring a case to a trial that could result in a client being sentenced to jail or found not guilty, rather than probation, thereby forfeiting the opportunity to recoup attorney's fees.

This stands in contradistinction to all national standards. National standards permit cost recovery from indigent-but-able-to-contribute defendants under limited circumstances. The American Bar Association's *Criminal Justice Standards, Providing Defense Services*, Standard 5-7.1 directs that: "Counsel should not be denied because of a person's ability to pay part of the cost of representation." Cost recovery after the representation has been provided is unconditionally prohibited (with one exception, where the client committed fraud in obtaining a determination of financial eligibility), under ABA Standard 5-7.2. Pre-representation contribution is permitted if: (1) it does not impose a long-

term financial debt; (2) there is a reasonable prospect that the defendant can make reasonably prompt payments; and (3) there are “satisfactory procedural safeguards,”<sup>136</sup> so as not to chill the exercise of the right to counsel.

Cost recovery from partially indigent defendants was first authorized by the *National Advisory Commission on Criminal Justice Standards and Goals*, Defense Standard 13.2 (promulgated in 1973 pursuant to directions of the 1967 President’s Crime Commission), with the caveat that the amount should be “no more than an amount that can be paid without causing substantial hardship to the individual or his family.” The concept was subsequently fleshed out in the *Guidelines for Legal Defense Systems in the United States* (National Study Commission on Defense Services, 1976), Guideline 1.7:

If the accused is determined to be eligible for defense services in accordance with approved financial eligibility criteria and procedures, and if, at the time that the determination is made, he is able to provide a limited cash contribution to the cost of his defense without imposing a substantial financial hardship upon himself or his dependents, such contribution should be required as a condition of continued representation at public expense...

1. (b) The amount of contribution to be made under this section should be determined in accordance with predetermined standards and administered in an objective manner; provided, however, that the amount of the contribution should not exceed the lesser of (1) ten (10) percent of the total maximum amount which would be payable for the representation in question under the assigned counsel fee schedule, where such a schedule is used in the particular jurisdiction, or (2) a sum equal to the fee generally paid to an assigned counsel for one trial day in a comparable case.

## ii. Availability and Use of Investigators

### ***Guidance of National Standards, ABA Principle 5***

All national standards strongly recommend that workloads should be adjusted to account for the extent to which an attorney has access to adequate support staff (investigators, social workers, paralegals, legal secretaries, and office managers). Investigators, for example, have specialized experience and training to make them more effective than attorneys at critical case-preparation tasks, such as finding and interviewing witnesses, assessing crime scenes, and gathering and evaluating evidence — tasks that otherwise have to be conducted, at greater cost, by an attorney. Similarly, social workers have the train-



ing and experience to assist attorneys in fulfilling their ethical obligations with respect to sentencing, by assessing the client's deficiencies and needs (e.g., mental illness, substance abuse, domestic problems, educational or job-skills deficits), relating them to available community-based services and resources, and preparing a dispositional plan meeting the requirements and expectations of the court, the prosecutor, and the law.<sup>137</sup>

Because of this, some states impose further restrictions on their indigent defense case-load standards. For example, public defenders in Indiana who do not maintain state-sponsored attorney-to-support-staff ratios cannot carry more than 120 felony cases per year (down from the standard of 150 felonies per year for full-time public defenders with appropriate support staff). Under the Indiana Standards, attorneys without adequate support staff cannot carry more than 300 misdemeanor cases per year (down from 400).<sup>138</sup>

### ***Current Practice in the 15th Judicial District IDO***

Current IDO policies regarding the use of investigators seem to reflect, at least in part, the political and judicial interference from the local indigent defender board in place prior to Act 307. Prior to Act 307 and under the previous chief public defender, the IDO had two or three investigators on retainer, with a line item in the budget for investigations in the amount of \$100,000 annually. The investigators were used in the most serious cases and were assigned to begin work during the pre-indictment phase. The investigator file would be turned over to the trial attorney, once that attorney was appointed after arraignment. A particular district court judge complained regularly about what he saw as an excessive use of investigation by the IDO. When the previous chief public defender retired, that district judge was able to work this policy issue into the hiring considerations for the next chief – at that time a decision made by the local indigent defender board whose members were appointed by the district court judges.

In 2007, the IDO spent \$7,285 on investigation; in 2008, it was \$3,833. The 2009 contracts signed in January 2009 with each of the defense attorneys contracted to the IDO provide:

1.B. Counsel agrees not to retain or otherwise hire experts, investigators or incur any expenses on behalf of the client without prior approval of The Program. The hiring of any expert/investigator without such approval will result in Counsel's being personally responsible for any fees, charges or expenses of such individuals. The Program may at his discretion approve an increase in fees paid to any expert/investigator previously approved.<sup>139</sup>

There is no further information in the contract instructing the attorney as to how they are to go about obtaining approval to hire an expert or investigator. The IDO provided to the NLADA site team the forms that IDO attorneys were required to use, at least as of June 15, 2009, to obtain approval for hiring an investigator (or expert) in a case.<sup>140</sup>

NLADA conducted its site visits in two parts. The first site visit occurred on September 1-3, 2009; the second occurred September 21-24, 2009. Between the two visits, on September 14, 2009, the district defender issued a memorandum to all IDO attorneys regarding investigation.<sup>141</sup> The IDO advises that the issuance of this memorandum at this time was purely coincidental. That memorandum made two significant changes regarding the use of investigators by IDO attorneys.

First, the memo provides that an investigator will interview every potential client arrested for a serious felony within seventy-two (72) hours of arrest, to obtain as much preliminary information as possible. Given that an attorney has not typically been appointed to represent a client at this point, it is unclear who will direct the investigator in carrying out this interview. The memo acknowledges as much, stating “[w]hen and if the individual is assigned an attorney, the investigator will immediately arrange a meeting with that attorney to discuss his/her findings, so that a continuing investigative plan can be implemented. Following such a meeting, the attorney should submit a request for investigative assistance . . .”

Second, the memo provides that defense attorneys are allowed to hire an investigator to provide up to five hours of investigative services in every case, payable at the rate of \$55 per hour, without having to first obtain approval from the district defender. This is an express change from the terms of the January 2009 contracts between the IDO and the defense attorneys. There are not any investigators under contract with the IDO. The IDO does, however, provide a list of seven investigators whom it approves the IDO attorneys to use, payable at the rate of \$55 per hour.<sup>142</sup>

Finally, this new use of investigator policy does not provide for investigators in anything other than “serious felony” cases. Presumably the past practice of not using investigators at all will continue in misdemeanor, juvenile delinquency, and other felony cases.

One district judge indicated his belief that defense attorneys should have absolute and unfettered access to an investigator whenever they believe they need one and that such access is “fundamental.” The local indigent defender board in existence prior to Act 307 would not approve the use of investigators based on budget constraints, but it was his belief that the IDO attorneys now have access to investigators for their cases.



## Conclusion

NLADA concludes that neither the legislative intent of Act 307 nor the constitutional imperative to provide a meaningful right to counsel are being met in the 15th Judicial District. Overcoming the hurdles that prevent the adequate implementation of the legislative intent will necessarily involve a concerted effort by advocates at both the state and local level. NLADA believes, however, that LPDB has the statutory authority to make the following changes without additional legislative direction:

1. *LPDB should promulgate, adopt and enforce contracting regulations*

NLADA notes that contracting with attorneys to provide indigent defense services is a perfectly acceptable *method* of providing those services, both under national standards and under Act 307. But a flat-fee contracting system that pits the financial interests of the attorneys against the interests of their clients, and in which insufficient data is gathered to provide accountability, is not acceptable under either.

NLADA urges the LPDB to promulgate all contracts between the LPDB and district defenders as well as between the LPDB and the indigent defense attorneys within each judicial district and to promulgate policies regarding the effectuation of those contracts. Contracts should cite to all pertinent LPDB standards, especially the performance standards, so that attorneys understand the parameters of performance required of them.

Similarly, to avoid any future confusion or legal quagmire, the LPDB should provide written authority to the banks that serve as the depository institutions for the indigent defender fund<sup>143</sup> in each judicial district, specifying the identity of the district defender who administers that fund and the powers that the district defender has over the fund, and should promulgate policies to establish checks and balances over the appropriate purposes for which the fund can be expended. This is clearly required of the LPDB by Act 307's mandate that the board "review and approve the strategic plan and budget proposals submitted by . . . district public defenders on behalf of the districts"<sup>144</sup> and adopt rules, standards, and guidelines with regard to accountability, salary, and compensation,<sup>145</sup> among other things.

2. *LPDB should adopt and implement attorney qualification & training standards*

LPDB needs to develop attorney qualification standards and training standards, such that it would be impossible for an attorney (whether new to a system or a long-standing provider) to be assigned to a case that they are unprepared to handle. Many states have already done so, and we suggest that LPDB look to Massachusetts as a best practice site on this front. Massachusetts provides indigent defense services through the Committee on Public Counsel Services (CPCS). CPCS has statutory oversight of the delivery of services in each of Massachusetts' counties and is re-

quired to monitor and enforce standards much like LPDB. Private attorneys, compensated at prevailing hourly rates through contracts, provide the majority of defender services.

At the local level, attorneys accepting cases must first be certified by CPCS to take cases. To accept district court cases (misdemeanors and concurrent felonies), attorneys must apply, be deemed qualified, and attend a five-day state-administered continuing legal education seminar offered several times throughout the year. No attorney may be a member of more than two regional programs (unless she is certified as bilingual).

Attorneys seeking assignment to felony cases must be individually approved by the Chief Counsel of CPCS, whose decision is informed by the recommendation of a Certified Advisory Board composed of eminent private attorneys from each geographical region. To be certified for these more serious cases, attorneys at the outset must have tried at least six criminal jury trials within the last five years or have other comparable experience. Proof of qualification, including names of cases, indictment numbers and charges, names of judges and prosecutors, dates, and a description of the services provided must be included in the application.

Recommendations from three criminal defense practitioners familiar with the applicant's work are also required. Certification is only valid for a term of four to five years, after which all attorneys must be reevaluated.<sup>146</sup>

All newly certified attorneys in Massachusetts must participate in a mandatory program of mentoring and supervision overseen by regional advocacy centers. For attorneys seeking appointments to children and family law matters, for example, counsel must meet with their mentor prior to any new assignments and bring writing samples to help the mentor develop a skills profile. The mentor and mentee are required to meet at least four times per year. The mentor is instructed to follow CPCS' performance guidelines in assessing the attorney's ability. Participation in the program is mandatory for an attorney's first eighteen months, and may continue longer at the discretion of the mentor.

3. *LPDB should adopt a policy requiring district defenders in populous jurisdictions to be full-time and begin implementing regional director system set out in Act 307.*

NLADA recognizes that attorney qualification, training and performance standards would be meaningless if there is no one to supervise the work attorneys are doing. And, though we recognize that ABA *Principle 2* requires a full-time public defender office be established in jurisdictions with a caseload sufficient to support one, we do not make that recommendation here – given the requirement in Act 307 that the existing delivery model is presumptively satisfactory and despite our belief that the 15th JDC does have a large enough caseload to support such an office. The language of Act 307 does not preclude the LPDB from requiring those jurisdictions with large caseloads to have a full-time defender director, whether that director is paid through a contract *method* or an employment *method*.

It is simply impossible for any attorney to supervise the work of 49 other attorneys spread across three parishes while working part-time, even if that attorney does not carry a full public caseload. Whether supervision criteria is developed at the state level or by local service providers or in combination is less relevant at this point than having someone with the time, tools and training to supervise and evaluate every single attorney and support staff in the jurisdiction. A meaningful evaluation process should include both “objective” measures of performance, such as case dispositions and other statistics, and the so-called “subjective” measures, such as courtroom observation and review of files. The “subjective” measures should be employed by reference to the policies and procedures of LPDB and may also include the judgment of the defender director about an attorney’s courtroom performance, sensitivity in dealing with clients and other factors.

Evaluations should be conducted on a regular basis (at least once a year); they should be in writing, shown to each attorney and support staff, and discussed. The employee must be able to submit written comments on the evaluation, and there must be a grievance procedure for disagreements about conclusions contained in the evaluation. To assure that evaluations are reliably done, evaluations of supervisors must address the effective use of the performance evaluation process.

NLADA does not take the position that every district defender in Louisiana need be full-time with a limited caseload, nor do we presume that there is no district defender who is providing adequate supervision and evaluation. It is clear to us, however, that the 15th IDO district defender has ceded to the office administrator whatever limited supervision is being performed. That is unacceptable. The 15th JDC needs immediate supervision and that can only come in the form of an adequately compensated and licensed professional whose job it is to provide on-going supervision and training.

It is crucial that there be a permanent physical location in each of the three parishes, staffed by an attorney during all business hours both personally and by telephone, that is open to the public as the location and identity of the public defense system. Clients, potential clients, witnesses, victims and victims’ families, law enforcement, prosecutors, judges, the community, and vendors all need to know where they can go to find and talk with the public defense system. In multi-parish districts such as the 15th JDC, especially where as here they operate as basically three independent court systems, there must be such a location in each parish (see side bar, page 8).

Just as the district public defense system must have a permanent physical presence for the community in each parish it serves, so should the LPDB have a permanent physical presence much closer in proximity to each district than can be provided by the state office in Baton Rouge. This requires the LPDB to institutionalize the regional director model anticipated in Act 307. The limited size of LPDB central staff simply makes it impossible, without regional directors, to determine whether appropriate supervision is taking place in each judicial district. Regional-

ization is not new to indigent defense in Louisiana. The Louisiana Appellate Project (LAP) has been in place as the statewide public defense provider for non-capital felony appeals since 1996. It is structured along geographic lines that are equivalent to each of the Circuit Court of Appeal jurisdictions, has an executive director, and has a supervising attorney designated for each of the five jurisdictions. This is true even though the entire LAP comprises only 26 attorneys.

LPDB does not have to move immediately to developing a regional director system throughout the state, but the problems of the 15th JDC and those reported in Calcasieu Parish suggest that a Regional Director for Southwest Louisiana would be a good place to start.

4. *LPDB should promulgate policies and provide training regarding the proper use of investigators*

The new September 14, 2009, IDO policy regarding the increased availability and use of investigators is a step forward for the 15th JDC IDO, but it is not well and fully thought out. It is crucial that the initial contact interview with the client be conducted either by the attorney who will actually be defending the client against the charge or by a representative of counsel who is operating under the direct supervision of the attorney.

As provided in the LPDB *Trial Court Performance Standards*, section 711.B.1., “the purpose of the initial interview is to acquire information from the client concerning the case, the client and pre-trial release, *and also to provide the client with information concerning the case.*” (emphasis added). It is for these reasons that the *Performance Standards* direct the attorney, where possible, to be familiar with the elements of the offenses and potential punishments, obtain copies of relevant documents, and for an in-custody client to be familiar with the legal criteria and procedures for determining pretrial release, the types of pretrial release conditions set by the courts and agencies that administer them, and the procedures for reviewing bail, all prior to the first meeting with the client. *Id.* at section 711.A. An investigator is simply not in a position, either through training or as allowed by the Louisiana Rules of Professional Conduct, to analyze the information provided by the client in terms of its applicability to the charges and defenses available and to provide to the client the necessary legal analysis. An investigator should at all times be working under the direct supervision of the appointed attorney.

The proper role of the investigator is to assist in conducting the investigation, under the supervision of the attorney, as set out in the LPDB *Trial Court Performance Standards*, section 717, performing tasks such as locating potential witnesses and accompanying the attorney during interviews of those witnesses, locating and documenting relevant physical evidence and crime scenes, locating and serving sub-



poenas to obtain relevant documents, and so forth. The funds presently allocated by the IDO to pay investigators to interview clients (at a time before an attorney is appointed under the present horizontal and delayed IDO system of appointing attorneys) should be reallocated to pay investigators to conduct investigation under the supervision of the attorney. This is not to say that investigation should wait until weeks after arraignment on the charge – rather counsel should be appointed promptly following a client’s arrest and should immediately have the use of and begin supervising the work of the investigator in the case. All public defense trial attorneys throughout the state should be trained in the proper use of investigators to assist them in the uniformly fair delivery of public defense services to their clients.

5. *LPDB should promulgate and require the implementation of policy directing that vertical representation be provided, whenever possible, in the 15th JDC and throughout Louisiana’s public defense system, with prompt appointment occurring in accordance with the mandates of Rothgery v. Gillespie County, 128 S.Ct. 2578 (2008), and appointment of counsel occurring on behalf of all indigent defendants facing loss of liberty as a potential sentence.*

Act 307 expressly directs the LPDB to “adopt standards and guidelines which ensure that each district devises a plan to provide that, to the extent feasible and practicable, the same attorney handles a case from appointment contact through completion at the district level in all cases.” 2007 La. Acts 307, section 148.B.(1)(b). In the 15th JDC, as was the factual scenario in *Rothgery*, trial defense attorneys are not presently being appointed to represent indigent defendants (whether in or out of custody) until after the initiation of prosecution by the District Attorney through the filing of a bill of information or securing an indictment. The IDO instead designates what could be referred to as a “placeholder attorney” (the pre-indictment/bond reduction attorney). This is tantamount to not appointing any attorney at all, as the placeholder attorney does not meet with the clients, does not begin investigation of the case, does not negotiate with the prosecutor for dismissal of or plea agreement in the case, and does not in short serve as *counsel* to the client in the defense of the charge against them. Then, on the back end of felony cases, the IDO does not provide continuity of trial counsel to represent defendants in any ensuing probation revocation hearing, *even where sentence has been deferred* pursuant to La. C.Cr.P. art. 893(D). *See also Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

More egregious still is the situation for misdemeanor defendants. Throughout the courts of the 15th Judicial District, indigent clients are expressly denied the right to have counsel appointed to represent them in many misdemeanor cases where they face potential loss of liberty, in direct violation of *Argersinger v. Hamlin* and *Ala-*

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*bama v. Shelton.* All misdemeanor defendants facing loss of liberty are denied representation in probation revocation proceedings, during which their probation may be revoked and they may be sentenced to jail.

In conclusion, NLADA applauds the Louisiana legislature for their leadership in constructing a system that can root out inefficient and ineffective use of taxpayer resources. But Act 307 is not an end in and of itself. Its passage simply demarcated a new phase on the continuum toward making *Gideon's* promise a reality. Though implementation of Act 307 has been arduous at times, NLADA believes that these relatively few recommendations, if implemented, will significantly meet the Legislative intent of the Louisiana Public Defender Act of 2007.



## Endnotes

<sup>1</sup> La. R.S. 15: 142 (B) 5.

<sup>2</sup> La. R.S. 15: 142 (B) 4.

<sup>3</sup> Numerous reports and papers detailed the inadequacies of the Louisiana public defender systems prior to Act 307. See, for example: NLADA, *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana's Criminal Courts*, September 2006; ABA-SCLAID, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, January 2005; Honorable Sylvia R. Cooks and Karen Karre Fontenot, *The Messiah is Not Coming: It's Time for Louisiana to Change its Method of Funding Indigent Defense*, 31 S.U.L. REV. 197 (2004); NLADA, *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years After Gideon*, March 2004; Bernadette Jones Palombo and Jeff Sadow, *The Provision of the Right to Counsel in Caddo Parish, Louisiana*, 2004; Michael M. Kurth and Daryl V. Burckel, *Defending the Indigent in Southwest Louisiana*, 2003; ABA, *The Children Left Behind: A Review of the Status of Defense for Louisiana's Children and Youth in Delinquency Proceedings*, 2002; ABA, *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana*, 2001; The Spangenberg Group, *The Orleans Indigent Defender Program: An Overview*, 1997; The Spangenberg Group, *Study of the Indigent Defender System in Louisiana: Final Report*, 1992; The Spangenberg Group, *A Study of the Operation of the Indigent Defense System in the 19th Judicial District East Baton Rouge Parish, Louisiana*, 1992; American University, *An Evaluation of Indigent Criminal Defense Services in Louisiana and A Proposal for a Statewide Public Defender Service*, 1974; American University, *Management Study of an Indigent Defender Program, New Orleans, Louisiana*, 1974.

<sup>4</sup> La. R.S. 15:144, repealed by 2007 La. Acts 307.

<sup>5</sup> La. R.S. 15:145, repealed by 2007 La. Acts 307.

<sup>6</sup> La. R.S. 15:146, prior to amendment and reenactment by 2007 La. Acts 307.

<sup>7</sup> For example, in 2005, the total combined cost of public defense throughout the state was \$25,943,529, of which only \$4,381,640 (16.9 percent) was funded by the state, and the balance of \$21,561,889 was generated locally. The Spangenberg Group, *State and County Expenditures for Indigent Defense Services in Fiscal Year 2005*, December 2006.

<sup>8</sup> La. R.S. 15:146, prior to amendment and reenactment by 2007 La. Acts 307.

<sup>9</sup> La. R.S. 15:571.11.(L).

<sup>10</sup> La. R.S. 15:148, prior to amendment and reenactment by 2007 La. Acts 307.

<sup>11</sup> La. R.S. 15:147(A)(1)(f), prior to amendment and reenactment by 2007 La. Acts 307.

<sup>12</sup> In 1973, the state paid \$10,000 to each district indigent defender board, pursuant to La. R.S. 15:146(C). Though the statute was not repealed until enactment of Act 307, the state never again paid these warrants.

<sup>13</sup> 2007 La. Acts 307, section 146.A.(1).

<sup>14</sup> 2007 La. Acts 307, section 147.A.

<sup>15</sup> 2007 La. Acts 18.

<sup>16</sup> 2007 La. Acts 307, section 167.

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<sup>17</sup> 2007 La. Acts 307, section 168.

<sup>18</sup> 2007 La. Acts 307, section 150.A.

<sup>19</sup> 2007 La. Acts 307, section 152.B.(15).

<sup>20</sup> 2007 La. Acts 307, section 152.B.(3).

<sup>21</sup> 2007 La. Acts 307, section 161.H.(1).

<sup>22</sup> “The provisions of this Act are to be construed to preserve the operation of district public defender programs which provide effective assistance of counsel and meet performance standards in whatever form of delivery that local district has adopted, provided that method of delivery is consistent with standards and guidelines adopted by the board pursuant to rules and as required by statute.” 2007 La. Acts 307, section 142.F.

<sup>23</sup> Site team bios are attached as Appendix B.

<sup>24</sup> List of interviews conducted attached as Appendix C.

<sup>25</sup> In the vernacular employed in the 15th Judicial District, everyone uses the term “IDO” to refer to the indigent defense system, which presumably would be the acronym for Indigent Defender Office. To avoid confusion, NLADA similarly refers to the IDO or the Indigent Defender Office for the balance of this report. We have chosen in the report title, however, to use the moniker of Indigent Defense *System* because we believe this more accurately reflects what exists in the 15th Judicial District.

In Louisiana and throughout the country, there are three basic forms of delivery system: a Public Defender Office, which is an agency of the county or state, staffed with attorneys and support staff, all as full-time government employees working together in a single office; a Contract System, where the county or state issues a contract to a lawfirm, an individual attorney, or a group of attorneys to handle a certain number of cases, type of cases, or cases arising out of specified courts, in a given year, in exchange for payment of an agreed rate (which is the type of system existing in the 15th Judicial District); or an Assigned/Appointed Counsel System, where individual attorneys have agreed to have their names placed on a list from which judges or an assigned counsel administrator may appoint them as needed on a case-by-case basis, and they are typically paid by the hour.

<sup>26</sup> One clerk splits her time between the Lafayette and Vermilion Parish offices.

<sup>27</sup> Although information relating to the District Attorney’s Office was outside the scope of this evaluation, it appears that most prosecutors in the 15th Judicial District are also part-time, with private offices where they engage in civil practice on behalf of private retained clients.

<sup>28</sup> A sample 2009 “Variable Fund Retainer Contract” is attached as Appendix D.

<sup>29</sup> There is a single exception in the contracts with one attorney, where a hand-written change was made to the contract. This is discussed more fully at page 14.

<sup>30</sup> A sample 2009 “Capital Variable Fund Retainer Contract” is attached as Appendix E. More detailed explanation of these capital defense contracts is contained *infra* at pages 18-22, 43; and in endnotes 46 to 55, 68, 126-127.

<sup>31</sup> *Gideon v. Wainwright*, 372 U.S. 335, 340 (1963) (emphasis added). The onus on state government to

fund 100% of indigent defense services is supported by American Bar Association and National Legal Aid & Defender Association criminal justice standards. See American Bar Association, *Ten Principles of a Public Defense Delivery System*, Principle 2: “Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.” See also: *Guidelines for Legal Defense Systems in the United States* (National Study Commission on Defense Services, U.S. Department of Justice, 1976), Guideline 2.4.

<sup>32</sup> 2007 La. Acts 307, section 147.A.

<sup>33</sup> See for example the November 10, 2009 statement by the LPDB regarding discovery of apparent misappropriation of significant funds from the Capital Appeals Project, further detailed in the WDSU report “Head of Non-Profit Resigns Amid Money Probe,” November 12, 2009.

<sup>34</sup> 2007 La. Acts 307, section 152.B.(15).

<sup>35</sup> 2007 La. Acts 307, section 152.B.(3).

<sup>36</sup> 2007 La. Acts 307, section 161.A.

<sup>37</sup> 2007 La. Acts 307, section 161.E. (1), (10).

<sup>38</sup> Among the duties of the LPDB under Act 307 is the requirement that it “adopt all rules necessary to implement the provisions of [the Act]. . . include[ing] . . . : Creating mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state.” Act 307, section 148.A.,B.(1). Areas to be addressed by these standards include:

- Workloads, based on case weighting;
- Vertical Representation;
- Client Communication;
- Supervision (both PD staff and assigned counsel);
- Performance Standards (capital, juvenile, appellate, trial);
- Qualifications for attorneys;
- Training;
- Accountability;
- Racial Diversity;
- Conflicts;
- Data Collection and Reporting;
- Salary and Compensation;
- Investigators and Experts.

In April 2009, the LPDB promulgated *Trial Court Performance Standards*. La. Reg., Vol. 35, No. 04, April 20, 2009. Though the 2009 contracts between the IDO and the contract attorneys were signed in January 2009, there is no indication that the contracts were updated to include reference to these standards, nor that the contract attorneys were informed in any way of their existence and the need to comply with them.

<sup>39</sup> See Appendix D, paragraph 1.D.

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<sup>40</sup> See *Memorandum*, dated September 14, 2009, from the district defender, to All IDO Attorneys, regarding Retainer Contracts. Appendix I.

<sup>41</sup> 2007 La. Acts 307, section 161.A. See also section 143(5): “District public defender’ or ‘chief indigent defender’ means an attorney **employed by or under contract with the board** to supervise service providers and enforce standards and guidelines within a judicial district or multiple judicial districts.”

<sup>42</sup> 2007 La. Acts 307, section 161.H.

<sup>43</sup> See Appendix D.

<sup>44</sup> Prior to Act 307, each indigent defender board (IDB) was a legal entity established by the legislature and statutorily given the authority to carry out its duties. La. R.S. 15:145, prior to *repeal by* 2007 La. Acts 307. The IDB was legislatively authorized to administer the indigent defender fund within the judicial district. La. R.S. 15:146, prior to *repeal by* 2007 La. Acts 307. The IDB also had authority to hire or contract with a public defender, and could thus convey to that public defender the authority to act on its behalf. So, in this way, a public defender could go to the bank with a letter from the IDB and have the authority to open a bank account and transact business, or with a letter from the IDB the public defender would have authority to enter into a contract on behalf of the IDB. Act 307 eliminated entirely the existence of the 41 local IDBs and replaced them with the single LPDB.

The LPDB is a state agency within the office of the governor, La. R.S. 15:146(A)(1), and all of the members of the board and its agents and employees are subject to the Code of Governmental Ethics. La. R.S. 15:146(A)(2). Every district defender is either an employee of or contractor with the LPDB, La. R.S. 15:161(A); 143(5), and is thus both a “public servant” and a “public employee” because they are under the supervision of the State Public Defender who is the agency head of the LPDB, La. R.S. 42:1102(3), (17)(a)(iv). The “district office,” by whatever name it is known, is merely the physical location of the district defender, and not a separate legal entity. La. R.S. 15:143(4).

By statute, only the LPDB can authorize the district defender to enter into contracts, La. R.S. 15:165(B)(3), and the district defender is prohibited from self-dealing by the Code of Governmental Ethics, La. R.S. 42:1113(A). In a somewhat similar situation in another of the judicial district public defense systems, the district defender was paying himself for 2/3 of office expenses for the use by the public defense system of a building he owned. The LPDB requested an advisory opinion concerning whether this was proper. In Ethics Board Docket No. 2009-951, the Louisiana Board of Ethics advised:

Section 1113A prohibits a public servant from bidding on or entering into a contract, subcontract or transaction that is under the supervision or jurisdiction of the public servant’s agency. Because Mr. [] is the District Defender, he may not enter into a contract with the District Defender’s Office, to defray his office expenses.

<sup>45</sup> See ABA Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992), Standard 5-3.3(b)(x); NLADA, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, 1984, Guidelines III-8, III-9.

<sup>46</sup> See Appendix D. NLADA requested from the IDO copies of all contracts for everyone in their system and we received most of them. We are aware that services are being provided by the following attorneys for whom we did not receive 2009 contracts: Louis Garrott; Remy Jardell; Dan Kennison; Randy Lasseigne; Scott Privat. We were provided with 2008 contracts for Garrott, Kennison, and Lasseigne. We were not provided a 2008 contract for Privat. It is believed that Jardell began contracting with the IDO during 2009.

<sup>47</sup> In telephone discussions with the IDO in preparation for our site visits, NLADA was advised:



Attorneys available for appointment in capital cases receive a base contract amount of \$12,000 for their availability; felony attorneys receive a base contract amount of \$48,000; juvenile attorneys receive a base contract amount of \$58,000; and misdemeanor attorneys receive a base contract amount of \$26,000. Each attorney then receives an additional \$500 for each year of experience/seniority/longevity. A small number of the attorneys are paid for providing administrative or supervisory level services, including the district defender.

It is somewhat unclear as to exactly what time period the above explanation applies.

NLADA received a copy of the 2007 fiscal reporting for the 15th Judicial District Indigent Defender Office. That report contains the breakdown for the contract amount for each individual defender during 2007. See Appendix J. The contract base amounts shown on the 2007 report comport with the information provided orally by the IDO, except that in 2007 attorneys appear to have been paid a base contract amount of \$24,000 for their availability in capital cases.

For the 2008 calendar year, which is the only full calendar year since enactment of Act 307, NLADA received copies of the contracts with the attorneys and also received a copy of the 2008 fiscal reporting for the 15th Judicial District Indigent Defender Office, which contain the total contract amount paid to each attorney but do not contain a break-down of the total contract amount by base pay amounts. NLADA can only presume that the information provided orally by the IDO pertained to the base contract amounts in effect during the 2008 calendar year.

For the 2009 calendar year, NLADA received copies of the contracts with the attorneys (although some appear to have been inadvertently omitted), but these do not contain a break-down of the total contract amount by base pay amounts. NLADA also had the oral information provided above. Finally, NLADA had the benefit of the district defender's September 14, 2009 *Memorandum to All IDO Attorneys*, in which he explains changes in the attorneys' contract amounts. See Appendix I. He wrote:

As of September 1, I will be able to re-instate everyone's 2008 contract amount, with the exception of First-Degree retainers. However, this increased monthly amount will cover a 10-month period (September, 2009 – June, 2010). I will not be able to go back and reimburse everyone for July and August, 2009. The attached contract amount is based on a 10-month period, not a 12-month period. The 2010 contracts and subsequent annual contracts will be for a 12-month period. Beginning July 1, 2010, I hope to increase the contract amounts. We are now on a fiscal calendar with the State.

I was not able to increase the First-Degree retainers to the 2008 amount. You will note however, that I increased the retainer amount by 50%. After a First-Degree case is assigned, a First-Degree attorney will receive an additional monthly amount over and above the retainer. It is no longer necessary to write time for First-Degree assignments.

The IDO did not provide to NLADA the new contracts to which the district defender refers in this *Memorandum*, which apparently took effect on September 1, 2009 and cover the 10-month period spanning September 1, 2009 through June 30, 2010.

From all of the above, NLADA was able to deduce that base contract amounts for each type of service were less under the 2009 contracts than they had been under the 2008 contracts. So, in calculating the base contract amounts for each attorney in 2009, NLADA added \$1,000 to the Seniority amount they were receiving in 2007 (\$500 per year for two years), deducted this 2009 Seniority amount from their total 2009 contract amount, and the remainder is the amount each attorney was paid for the particular type of case they were contracted to handle.

<sup>48</sup> It is rare that NLADA evaluates a public defense system and finds that juvenile delinquency attorneys are paid more than felony attorneys. At first blush, the site team was encouraged that perhaps this reflected a recognition of the special duties of juvenile defense attorneys. The district defender explained that these base contract fees are calculated based on "days in court." In other words, there are a given number of days during which court will be held on felony matters during a year, and that is 22 days in court; while there are 48 court days for juvenile delinquency matters. At this rate, felony attorneys are paid \$1,940.90 per

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court day and juvenile delinquency attorneys are paid \$1,114.58 per court day.

<sup>49</sup> For detailed discussion of the attorneys' caseloads and workloads, see pages 39 to 48.

<sup>50</sup> See Appendix D, paragraphs 2.A., B.

<sup>51</sup> "Overhead costs 'include the cost of office, library, equipment, supplies, professional liability insurance, and secretarial help, all of which would be utilized in serving as counsel for an indigent defendant.' Overhead is 'all actual costs to the lawyer for the purpose of keeping his or her door open to handle [the appointed case] . . . pro rata.'" *State v. Wigley*, 624 So.2d 425, 428 n.4 (La. Sept. 7, 1993) (internal citations omitted).

<sup>52</sup> See pages 48 to 50 for a detailed discussion of the use of and payment for investigators in the IDO.

<sup>53</sup> *State v. Wigley*, 624 So.2d 425 (La. Sept. 7, 1993).

<sup>54</sup> *Wigley*, 624 So.2d at 429.

<sup>55</sup> See Appendix D, paragraph 5.B.

<sup>56</sup> Principle 6 of the ABA *Ten Principles* demands that "[d]efense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation." *Ten Principles of a Public Defense Delivery System* (ABA 2002) at p. 3. See also *Performance Guidelines for Criminal Defense Representation* (NLADA 1995), Guidelines 1.2, 1.3(a); *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (ABA 1989), Guideline 5.1.

<sup>57</sup> For most public defender systems across the country, the training and practical experience gained by attorneys working on less serious criminal cases permits them to acquire the skills necessary to handle more serious cases. Over time – often measured in years – attorneys in these systems acquire the skills that support handling more challenging cases.

<sup>58</sup> Commentary to the ABA *Standards for Providing Defense Services* views attorney training as a "cost-saving device" because of the "cost of retrials based on trial errors by defense counsel or on counsel's ineffectiveness." The Preface to the NLADA *Defender Training and Development Standards* states that quality training makes staff members "more productive, efficient and effective." Available at: [http://www.nlada.org/Defender/Defender\\_Standards/Defender\\_Training\\_Standards](http://www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards).

<sup>59</sup> These can vary greatly both in kind and number but they commonly include such things as: fostering and supporting professional development; giving people clear guidance about what is expected of them; and supporting accountability. Moreover, effective performance plans are tied to and support the fulfillment of the agency's mission and vision. Critically, effective plans emphasize a goal of promoting the attorney's performance success.

<sup>60</sup> People need to know what is expected of them in order to work to fulfill those expectations. Performance expectations should include, for example, attitudinal expectations and administrative responsibilities as well as substantive knowledge and skills.

<sup>61</sup> People whose positions require them to conduct performance evaluations must be trained and evaluated as part of their performance plan, so that evaluations are done fairly and consistently.

<sup>62</sup> 2007 La. Acts 307, section 148.A., B.

<sup>63</sup> 2007 La. Acts 307, section 153.

<sup>64</sup> 2007 La. Acts 307, section 154. Among other duties, this director is to “ensure that board policies and public pronouncements properly recognize that children and young adults do not possess the same cognitive, emotional, decision-making, or behavioral capacities as adults and, as such, require that special attention be given to the representation of juveniles to ensure uniformly competent representation.” *Id.* at subsection B.(3).

<sup>65</sup> 2007 La. Acts 307, section 157; specifically to develop evaluation protocols and evaluation implementation plans, conduct regular assessment and ongoing monitoring, and make reports to the LPDB on variances from board standards and guidelines in the individual districts.

<sup>66</sup> 2007 La. Acts 307, section 158; having all the same duties as the trial-level compliance officer, but in the area of juvenile delinquency representation.

<sup>67</sup> 2007 La. Acts 307, section 152.B.(15).

<sup>68</sup> See Appendix D, paragraph 1.E. For attorneys admitted to practice prior to 2008, they must obtain 12.5 hours of CLE each year, including one hour of ethics and one hour of professionalism. For attorneys newly admitted to the Louisiana bar in either 2008 or 2009, they must obtain 12.5 hours of CLE annually, and during their first two years of admission 8 hours of which must be earned in ethics, professionalism and/or law office management. <http://www.lascmcle.org/requirements.asp#3rd>

To be eligible to represent an indigent client in a capital case, an attorney must also be certified, under the standards adopted by the LPDB predecessor agency (the Louisiana Indigent Defender Board, “LIDB”) and must obtain 12 hours of CLE involving advocacy in capital defense, followed by 12 hours in capital defense advocacy every two years thereafter. Louisiana *Standards on Indigent Defense*, Chapter 7, *Standards Relating to the Provision of Counsel to Indigents Accused of Capital Crimes*, Standards 7-1.3 and 7-1.4. <http://www.lapdb.org/Acrobat%20files/Capital%20Certification%20Rules.PDF> These hours may be part of, and are not required to be in addition to, the CLE requirements imposed by the State Bar Association.

<sup>69</sup> See Appendix D, paragraph 1.E.

<sup>70</sup> See Appendix D, paragraph 1.D.

<sup>71</sup> The IDO did not provide a copy of the written contract with this attorney.

<sup>72</sup> The attorney who was replaced in Abbeville City Court OCS-parent cases is still an IDO contract attorney. He now is contracted to handle only Vermilion District Court juvenile delinquency, misdemeanors, and probation revocations – in essence a promotion from city court work.

<sup>73</sup> NSC commentary at 72-74.

<sup>74</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>75</sup> *Kirby v. Illinois*, 406 U.S. 682 (1972).

<sup>76</sup> *Coleman v. Alabama*, 399 U.S. 1 (1970).

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<sup>77</sup> *County of Riverside v. McGlaughlin*, 500 U.S. 44 (1991).

<sup>78</sup> *ABA Defense Services*, commentary to Standard 5-6.1, at 78-79.

<sup>79</sup> *ABA Principle 7*: The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

<sup>80</sup> *NSC* at 470.

<sup>81</sup> *ABA Defense Services*, commentary to Standard 5-6.2, at 83.

<sup>82</sup> *NSC* at 462-470, citing *Wallace v. Kern* (slip op., E.D.N.Y. May 10, 1973), at 30; reported at 392 F. Supp. 834, rev'd on other grounds, 481 F.2d 621; *Moore v. U.S.*, 432 F.2d 730, 736 (3rd Cir. 1970); and *U.S. ex rel Thomas v. Zelker*, 332 F.Supp. 595, 599 (S.D.N.Y. 1971).

<sup>83</sup> *ABA Principle 4*: Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.

<sup>84</sup> *ABA Model Rules of Professional Conduct*, Rule 1.6; *Model Code of Professional Responsibility*, DR 4-101; *ABA Defense Function*, Standard 4-3.1; NLADA Performance Guidelines, 2.2. State Performance Standards; New York’s “Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State” (NYSBA 2004); “New York State Bar Association Standards for Providing Mandated Representation” (NYSBA 2005); and “Client-Centered Representation Standards” (NYSBA Client Advisory Board 2005).

<sup>85</sup> *NSC*, Guideline 5.10.

<sup>86</sup> *NSC*, Guideline 5.10, and commentary at p. 460.

<sup>87</sup> 2007 La. Acts 307, section 175.

<sup>88</sup> “The board shall adopt standards and guidelines which ensure that each district devises a plan to provide that, to the extent feasible and practicable, the same attorney handles a case from appointment contact through completion at the district level in all cases.” 2007 La. Acts 307, section 148.B.(1)(b).

<sup>89</sup> “The board shall adopt standards and guidelines to ensure that defense attorney providing public defender services provide documentation of communications with clients regarding the frequency of attorney client communications as required by rules adopted by the board.” 2007 La. Acts 307, section 148.B.(1)(c).

<sup>90</sup> La. C.Cr.P. arts. 230.1 and 230.2. In Lafayette Parish, the arraignments following institution of prosecution are all conducted by Commissioner Thomas J. Frederick. He is appointed by the 13 elected District Court Judges. He has presently served as Commissioner for seven years, and prior to being appointed as Commissioner he was a contract public defender for 11 years.

<sup>91</sup> See Appendix K.

<sup>92</sup> La. C.Cr.P. art. 701(B).

	In-Custody	Out-of-Custody
Misdemeanor	45 days	90 days
Felony	60 days	150 days
Capital Felony	120 days	

<sup>93</sup> La. C.Cr.P. art. 701(C).

<sup>94</sup> At least part of the delay in instituting prosecution was attributed to law enforcement being slow to produce written reports to the prosecutors. As a result of jail overcrowding, the parish leadership have pressured law enforcement to provide written reports within two weeks of arrest, in the hope that the prosecutors would be able to evaluate cases earlier and dismiss those they do not intend to prosecute so that the defendants could be released from jail. Despite these efforts, it generally takes 3 to 4 weeks on average before the written report is provided by law enforcement to the prosecutor, and it then takes the DA's office another 3 to 4 weeks to evaluate the case.

Jail overcrowding appears to be a quite serious problem. The Lafayette Parish jail was built to hold 338, but at the time of the site visit it was holding 954 inmates, double- and triple-bunked. Some sheriff's department officials expressed the belief that the only reason they stop at 954 is because the fire marshal will not allow more. When the jail population exceeds 954, they ship additional inmates out for housing to Avoyelles Parish in groups of 10 at a time.

<sup>95</sup> See Appendix P.

<sup>96</sup> See Appendix M. The only defendants who are not required to pay the \$40 application fee are "in-mates" – presumably those who are in custody at the time they complete the application.

<sup>97</sup> See Appendix L.

<sup>98</sup> 2007 La. Acts 307, section 143(6). See also, 2007 La. Acts 307, section 175.A.(1)(b)-(c):

A person will be deemed 'indigent' who is unable, without substantial financial hardship to himself or to his dependents, to obtain competent, qualified legal representation on his own. 'Substantial financial hardship' is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, resides in public housing, or earns less than two hundred percent of the Federal Poverty Guideline. A defendant is presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility.

Defendants not falling below the presumptive threshold will be subjected to a more rigorous screening process to determine if their particular circumstances, including seriousness of the charges being faced, monthly expenses, local private counsel rates, would result in a 'substantial hardship' were they to seek to retain private counsel.

<sup>99</sup> 2007 La. Acts 307, section 174.A.(1)(b)-(e).

<sup>100</sup> 407 U.S. 25 (1972).

<sup>101</sup> 535 U.S. 654 (2002).

<sup>102</sup> The Court observed:

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The requirement of counsel may well be necessary for a fair trial even in a petty offense prosecution. We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more. . . . While only brief sentences of imprisonment may be imposed, the cases often bristle with thorny constitutional questions.

. . .

Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor, as well as in felony, cases. Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

In addition, the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result. . . . There is evidence of the prejudice which results to misdemeanor defendants from this “assembly line justice.”

*Argersinger v. Hamlin*, 407 U.S. 25, 33-36 (1972) (citations omitted).

<sup>103</sup> *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).

<sup>104</sup> Examples of such conditions include attending drug treatment, observing a curfew, maintaining employment, or paying fines and court costs. The Court said:

Where the State provides no counsel to an indigent defendant, does the Sixth Amendment permit activation of a suspended sentence upon the defendant’s violation of the terms of probation? We conclude that it does not. A suspended sentence is a prison term imposed for the offense of conviction. Once the prison term is triggered, the defendant is incarcerated not for the probation violation, but for the underlying offense. The uncounseled conviction at that point “result[s] in imprisonment,” it “end[s] up in the actual deprivation of a person’s liberty.” This is precisely what the Sixth Amendment, as interpreted in *Argersinger* and *Scott*, does not allow.

*Alabama v. Shelton*, 535 U.S. 654, 662 (2002) (internal citations omitted).

<sup>105</sup> There was some indication that the Abbeville City Court judge who had just taken the bench in January 2009 was re-examining this long-standing policy and was considering appointing counsel in allailable offenses, but there had been no policy change in this regard at the time of the site visit in September 2009.

<sup>106</sup> The commentary to ABA Standard 5-6.2 explains the deficiencies of horizontal representation. “The disadvantages of horizontal representation, particularly in human terms, are substantial. Defendants are forced to rely on a series of lawyers and, instead of believing they have received fair treatment, may simply feel that they have been ‘process by the system.’ This form of representation may be inefficient as well, because each new attorney must begin by familiarizing himself or herself with the case and the client must be re-interviewed. Moreover, when a single attorney is not responsible for the case, the risk of substandard representation is probably increased.”

<sup>107</sup> The pre-indictment attorney: represents all in-custody IDO clients at any bond reduction hearing; files any pre-indictment motions or writs for all in-custody IDO clients when a delay in the institution of prosecution provides a basis to seek their release; and appears at arraignment with all IDO clients, both in-custody and out-of-custody.

<sup>108</sup> See Appendix L.



<sup>109</sup> There are a total of 15 IDO attorneys who are certified to be appointed in capital cases: eight in Lafayette; four in Acadia; and three in Vermilion.

<sup>110</sup> See Appendix N.

<sup>111</sup> Workload limits have been reinforced in recent years by a growing number of systemic challenges to underfunded public defense systems, where courts do not wait for the conclusion of a case, but rule before trial that a defender's caseloads will inevitably preclude the furnishing of adequate defense representation. See, e.g., *Missouri ex rel. Wolff v. Ruddy*, 617 S.W.2d 64 (Mo. 1981), *cert. den.* 454 U.S. 1142 (1982); *New Hampshire v. Robinson*, 123 N.H. 665, 465 A.2d 1214 (1983); *Corenevsky v. California Superior Court*, 36 Cal.3d 307, 682 P.2d 360 (1984); *Arizona v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); *Arizona v. Hanger*, 146 Ariz. 473, 706 P.2d 1240 (1985); *California v. Knight*, 194 Cal. App. 337, 239 Cal. Rptr. 413 (1987); *Kansas ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988), *cert den.* 495 U.S. 957 (1989); *Hatten v. Florida*, 561 So.2d 562 (Fla. 1990); *In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit*, 561 So.2d 1130 (Fla. 1990); *Oklahoma v. Lynch*, 796 P.2d 1150 (Okla. 1990); *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991); *City of Mount Vernon v. Weston*, 68 Wash. App. 411, 844 P.2d 438 (1993); *Louisiana v. Peart*, 621 So.2d 780 (La. 1993); *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1996). Many other cases have been resolved by way of settlement.

<sup>112</sup> The items contained in the text are just a partial list of ethical duties required under national and state performance guidelines. *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995) is available on-line at: [www.nlada.org/Defender/Defender\\_Standards/Performance\\_Guidelines](http://www.nlada.org/Defender/Defender_Standards/Performance_Guidelines).

<sup>113</sup> For example: bail reduction motions; motion for preliminary examination; motion for discovery; motion for bill of particulars; and motion for initial investigative report. Also, motions to quash and motions to suppress.

<sup>114</sup> Throughout our country, more than 80 percent of people charged with crimes are deemed too poor to afford lawyers. See: Harlow, U.S. Department of Justice, Office of Justice Programs, *Defense in Criminal Cases* at 1 (2000); Smith & De-Frances, U.S. Department of Justice, Office of Justice Programs, *Indigent Defense* at 1 (1996). See generally: Stuntz, *The Virtues and Vices of the Exclusionary Rule*, 20 Harv. J. L. & Pub. Pol. 443, 452 (1997). The actual number of such individuals will increase as the number of poor people in the United States (currently estimated at 37 million) goes up. See A.P., *U.S. Poverty Rate Rises to 12.7 Percent*, N.Y. Times, August 30, 2005, <http://www.nytimes.com/aponline/national/APCensus-Poverty.html?ei=5094&en=d74b58>. (8/30/2005). See also: Congressional Research Service, *Poverty in the United States: 2008* (October 6, 2009): "In 2008, 39.8 million people were counted as poor in the United States—an increase of 2.6 million persons from 2007, and nearly the largest number of persons counted as poor since 1960. The poverty rate, or percent of the population considered poor under the official definition, was reported at 13.2%; up from 12.5% in 2007, and the highest rate since 1997. The recent increase in poverty reflects the worsened economic conditions since the onset of the economic recession in December 2007. Many expect poverty to rise further next year, and it will likely remain comparatively high even after the economy begins to recover. The incidence of poverty varies widely across the population according to age, education, labor force attachment, family living arrangements, and area of residence, among other factors. Under the official poverty definition, an average family of four was considered poor in 2008 if its pre-tax cash income for the year was below \$22,025. This report will be updated on an annual basis, following release of U.S. Census Bureau annual income and poverty estimates." (Available at: <http://www.fas.org/sfp/crs/misc/RL33069.pdf>)

<sup>115</sup> See *Indigent Defense Caseloads and Common Sense: An Update* (NLADA, 1992), surveying state and local replication and adaptation of the NAC caseload limits.

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<sup>116</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 276, Standard 13.12. The National Advisory Commission accepted the numerical standards arrived at by the NLADA Defender Committee “with the caveat that particular local conditions — such as travel time — may mean that lower limits are essential to adequate provision of defense services in any specific jurisdiction.” *Id.* at 277. Because many factors affect when a caseload becomes excessive, other standards do not set numerical maximums. ABA *Principle 5* notes in commentary that national numerical standards should in no event be exceeded and that “workload” — caseload adjusted by factors including case complexity, availability of support services, and defense counsel’s other duties — is a better measurement.

<sup>117</sup> The NAC numerical standards have been refined, but not supplanted, by a growing body of methodology and experience in many jurisdictions for assessing “workload” rather than simply the number of cases, by assigning different “weights” to different types of cases, proceedings and dispositions. See *Case Weighting Systems: A Handbook for Budget Preparation* (NLADA, 1985); *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001) [www.ncjrs.org/pdffiles1/bja/185632.pdf](http://www.ncjrs.org/pdffiles1/bja/185632.pdf).

<sup>118</sup> American Bar Association, Standing Committee on Ethics and Professional Responsibility. *Formal Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*. May 13, 2006. Opinion can be found online at: [www.abanet.org/cpr/pubs/ethicopinions.html](http://www.abanet.org/cpr/pubs/ethicopinions.html).

<sup>119</sup> American Bar Association, *Eight Guidelines of Public Defense Related to Excess Workload*, August 2009, p. 11.

<sup>120</sup> 2007 La. Acts 307, section 147.B.(4)(c).

<sup>121</sup> 2007 La. Acts 307, sections 148.A., B.(1)(a), B.(3), B.(8), B.(9), B.(11), B.(13).

<sup>122</sup> See Appendix Q.

<sup>123</sup> See Appendix R. One of the problems in grappling with the true workloads of the IDO attorneys is that almost all of the IDO attorneys carry what is known as a “mixed caseload.” A mixed caseload occurs any time an attorney handles more than one type of case from the available types: capital, felony, misdemeanor, juvenile. For this reason, the most accurate method of comparing the workloads among the attorneys of the IDO is to convert the overall caseload of each attorney into “Misdemeanor Equivalents,” which allows comparison of the workload of a felony attorney to the workload of a misdemeanor attorney, and so forth. The final two columns of Appendix R provide this information and allow for this comparison.

<sup>124</sup> 2007 La. Acts 307, section 174.C.

<sup>125</sup> 2007 La. Acts 307, section 174. A., B.

<sup>126</sup> SPRC 2. [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=SPRC&ruleid=supsprc2](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=SPRC&ruleid=supsprc2).

<sup>127</sup> See Appendix S. Although the list of pending capital cases appears to show 20 capital cases as of 6/30/09, LPDB explains that there were actually 13 capital cases on that date. This is because seven capital defendants’ cases were counted more than once: Aaron Francois, Kevin Francis, Kevin Gildhouse, Ove Williams, Ryan Williams, and Aaron Leday. This is an anomaly of the current LPDB database. If more



than one attorney enters the same case, the case will show up twice even though it has the same docket number. The only way to cross-check this is by having all of the attorneys' case lists with clients' names and all docket numbers.

<sup>128</sup> Thomas Dupont is also a Lafayette parish IDO attorney contracted to handle Lafayette City Juvenile cases. He is not included in this calculation because he did not begin with the IDO until February of 2009, and so he only received cases during 5 months of this 12-month fiscal year period.

<sup>129</sup> See Appendix D, paragraphs 2.A., 2.B., 5.C.

<sup>130</sup> See Appendix R. The percentage of national workload standards for each IDO attorney was calculated after converting the attorney's caseload to a misdemeanor equivalent. See also endnote 123 *supra*. We excluded certain attorneys from consideration, either because they did not work as an IDO attorney for the full 12-month period (Thomas Dupont), or they accept cases only sporadically (James Landry), or their IDO contract calls for them to serve a certain role rather than handle a certain case type (Scott Privat, Trent Gauthier, Remy Jardell, and Christopher Larue).

<sup>131</sup> La. C.Cr.P. art. 920.

<sup>132</sup> See Appendix L. The IDO refers to the amount that a defendant is to pay for their appointed counsel as "PI Fee," which we believe stands for "partial indigency fee." The partial indigency fee being assessed by the IDO is calculated solely on the basis of the amount of funds they determine that a defendant has after paying their monthly expenses. This is shown on Appendix L under the headings of "felony" and "misdemeanor."

<sup>133</sup> It is not clear whether there are children or parents of juveniles who are locked up for failure to pay IDO fees as a condition of probation, but it is certain that this is possible for adult clients on both misdemeanor and felony probation. As an aside, the misdemeanor probation supervisor told the site team that the most common violation upon which people's misdemeanor probationary sentences are revoked is failure to attend classes and that 75 percent of all misdemeanor probationers never report ("pled and fled").

<sup>134</sup> In 2008, IDO recouped from its clients \$258,591.02 in attorneys' fees and \$96,237.18 in application fees, a total of \$354,828.20. For 2008, that amounted to 12.2 percent of the office's annual revenue. When added to IDO revenue from court costs (\$1,429,210.35), bond fees & forfeitures (\$329,279.52), and earned interest (\$30,165.40), the office operated on \$2,143,483.47 in local funds. The state funds provided by LPDB that year (\$744,580) were only 25.8 percent of the office's \$2,889,563.47 in total revenues.

<sup>135</sup> In 2008, out of \$2,962,545.92 in total expenses, \$2,543,883.89 (85 percent) went to the office's 48 contract attorneys, leaving 15 percent for all other expenses.

<sup>136</sup> Required safeguards include:

- Right to notice of the potential obligation;
- Right to an evidentiary hearing on the imposition of costs of counsel, with an attorney present and with the opportunity to present witnesses and to have a written record of the judicial findings;
- Right to a determination of present ability to pay actual costs of counsel and related fees, such as investigative or clerical costs;
- Right to all civil judgment debtor protection;
- Right to petition for remission of fees, in the event of future inability to pay;

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- Notice that failure to pay will not result in imprisonment, unless willful;
- Notice of a limit, statutory or otherwise, on time for the recovery of fees;
- Adequate information as to the actual costs of counsel, with the right not to be assessed a fee in excess of those actual costs; and
- Where any of these rights are relinquished, the execution of a voluntary, knowing and intelligent written waiver, as is required in any instance concerning the constitutional right to counsel.

<sup>137</sup> Such services have multiple advantages. As with investigators, social workers are not only better trained to perform these tasks than attorneys, but are more cost-effective; preparation of an effective community-based sentencing plan reduces reliance on jail and its attendant costs; defense-based social workers are, by virtue of the relationship of trust engendered by the attorney-client relationship, more likely to obtain candid information upon which to predicate an effective dispositional plan than an attorney; and the completion of an appropriate community-based sentencing plan can restore the client to a productive life, reduce the risk of future crime, and increase public safety.

<sup>138</sup> See <http://www.in.gov/judiciary/pdc/docs/standards/indigent-defense-non-cap.pdf> at Table 1, p. 14.

<sup>139</sup> See Appendix D, paragraph 1.B.

<sup>140</sup> See Appendix T.

<sup>141</sup> The memo is provided as Appendix U.

<sup>142</sup> See Appendix U.

<sup>143</sup> 2007 La. Acts 307, section 168.

<sup>144</sup> 2007 La. Acts 307, section 147.B.(3).

<sup>145</sup> 2007 La. Acts 307, section 148. A., B.

<sup>146</sup> First and second degree murder cases require proof of five years of criminal litigation experience, familiarity with Massachusetts' criminal courts, service as lead counsel in at least ten jury trials of a serious and complex nature over the preceding five years, at least five of which have been life felony indictments resulting in a verdict, decision or hung jury. As with Superior Court certification, applicants must submit information along with recommendations of three criminal defense lawyers.



## Appendices

## Effective Assistance of Counsel

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**Appendix A:**  
***ABA Ten Principles of a Public Defense  
Delivery System***

**1** The public defense function, including the selection, funding, and payment of defense counsel,<sup>1</sup> is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.<sup>2</sup> To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.<sup>3</sup> Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.<sup>4</sup> The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>5</sup>

**2** Where the caseload is sufficiently high,<sup>6</sup> the public defense delivery system consists of both a defender office<sup>7</sup> and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.<sup>8</sup> The appointment process should never be ad hoc,<sup>9</sup> but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.<sup>10</sup> Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure respon-

sible for ensuring uniform quality statewide.<sup>11</sup>

**3** Clients are screened for eligibility,<sup>12</sup> and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request,<sup>13</sup> and usually within 24 hours thereafter.<sup>14</sup>

**4** Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.<sup>15</sup> Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.<sup>16</sup> To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.<sup>17</sup>

**5** Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by fac-

tors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>

**6 Defense counsel's ability, training, and experience match the complexity of the case.** Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.<sup>21</sup>

**7 The same attorney continuously represents the client until completion of the case.** Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

**8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be

let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases,<sup>25</sup> and separately fund expert, investigative, and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

**9 Defense counsel is provided with and required to attend continuing legal education.** Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.<sup>28</sup>

**10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.** The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.<sup>29</sup>



<sup>1</sup> “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

<sup>2</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter “NAC”], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “NSC”], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA”], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter “Assigned Counsel”], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter “Contracting”], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter “Model Act”], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1(D).

<sup>3</sup> NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter “ABA Monitoring”], Standard 3.2.

<sup>4</sup> Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Inde-

pendence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

<sup>6</sup> “Sufficiently high” is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

<sup>7</sup> NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. “Defender office” means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>10</sup> ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

<sup>11</sup> NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

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<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

<sup>13</sup> NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3. 15 American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter “ABA Defense Function”], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter “Performance Guidelines”], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

<sup>18</sup> NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare,

and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

<sup>20</sup> ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter “Appellate”], Standard 1-F.

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

<sup>22</sup> NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

<sup>23</sup> NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

<sup>25</sup> NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

<sup>28</sup> NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III- 17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

<sup>29</sup> NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

## **Appendix B:**

### **NLADA Research Team Bios**

**T. Patton Adams** is the Executive Director of the South Carolina Commission on Indigent Defense which oversees the indigent defense system in the state. He was instrumental in achieving legislation which merged appellate defense services with the rest of the state's indigent defense system; and subsequently led efforts in 2007 which resulted in a unified, statewide public defender system and a 50 percent increase in state appropriated funding. He is a graduate of Washington & Lee University and the University of South Carolina School of Law, a former Mayor of Columbia, SC, and a member of the Charleston School of Law Board of Advisors. He has previously participated in NLADA-NDLI training for the Louisiana Public Defender Board, and as a panelist at the February 2010 Department of Justice Symposium, and is a member of the American Council of Chief Defenders and the NLADA Defender Policy Group.

**James D. Bethke** serves as the director of the Texas Task Force on Indigent Defense charged with implementing a statewide system of standards, financing and other resources for criminal defendants unable to hire attorneys. He also serves as the presiding officer of the Timothy Cole Advisory Panel on Wrongful Convictions. He is a member of the Texas Criminal Justice Integrity Unit. He is a past-chair Juvenile Law Exam Commission for the Texas Board of Legal Specialization. He currently serves on the Indigent Defense Advisory Group (IDAG) for the ABA Standing Committee for Legal Aid and Indigent Defendants. He is a U.S. Army veteran from the 101st Airborne Division, is a graduate of the University of Texas at Tyler and the Texas Tech University law school.

**David Carroll** is the director of research and evaluation in Defender Legal Services division of the National Legal Aid & Defender Association. Mr. Carroll has conducted assessments of the right to counsel in numerous jurisdictions across the country, including: Montana, New York, the District of Columbia, Hamilton County (Cincinnati) Ohio, Clark County (Las Vegas) Nevada, Santa Clara County (San Jose) California, and Venango County (Franklin) Pennsylvania. He is currently serving as an advisor to the Nevada Supreme Court Task Force on Indigent Defense and providing technical assistance to the Idaho State Criminal Justice Planning Commission.

NLADA's report, *A Race to the Bottom: Speed & Savings over Due Process*, details the extent to which the Constitutional right to counsel is inadequately enforced in criminal courts throughout Michigan. The report — conducted on behalf of the Michigan Legislature per joint resolution (SCR 39) in conjunction with the State Bar of Michigan — shows that few Michigan counties have evolved beyond the parameters of the early twentieth century systemic defense delivery model described in the Scottsboro Boys case [*Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)].

In 2004, NLADA released *In Defense of Public Access to Justice*, a comprehensive report detailing the impact Louisiana's systemic indigent defense deficiencies had on one judicial district — Avoyelles Parish. A legislative Task Force on Indigent Defense subsequently retained Carroll to advise them on different models for delivering indigent defense services. The Louisiana State Bar retained NLADA to document issues in post-Katrina New Orleans and to create a road map for a legislative fix to the state's systemic deficiencies. The second report, primarily authored by Carroll and released in September 2006, was the starting point for a legislative advisory group put together by the

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chair of the House Criminal Justice Committee that eventually led to the passage of the Louisiana Public Defender Act of 2007.

**Karl Doss** is director of Training & Community Education for the National Legal Aid & Defender Association. He joined NLADA in 2009 as staff attorney with NLADA's Defender Legal Services. During his 23 years as a lawyer, Karl has been admitted to practice law in Minnesota, New York, and Virginia and has held a numerous positions, including: assistant public defender in Hennepin County, Minnesota; assistant county attorney in Hennepin County; referee of the Hennepin County Family Court; law guardian in the Brooklyn (NY) Family Court; deputy public defender in Norfolk, Virginia; director of training for the Virginia Indigent Defense Commission; and director of Judicial Programs with the Supreme Court of Virginia.

**Richard Goemann** recently left the National Legal Aid & Defender Association to join D.C. Law Students in Court as the organization's executive director. From 2006-10, he served as the director of Defender Legal Services for the NLADA. Previously, Goemann was an Assistant Federal Public Defender for the Eastern District of Virginia and served as the Executive Director for Virginia's Indigent Defense Commission, and as the Executive and Deputy Director for the IDC's predecessor agency, the Public Defender Commission. Richard also served as the Public Defender for Fairfax, Virginia, and was an assistant and senior assistant public defender in Alexandria, Virginia. Goemann received his J.D. degree from New York University School of Law, and was selected as an E. Barrett Prettyman Graduate Fellow at Georgetown University Law Center where he earned an LL.M. degree in Advocacy.

**Phyllis Mann** is the director of the National Defender Leadership Institute, within the National Legal Aid & Defender Association. Prior to joining NLADA, she was a consultant in criminal defense, providing expert testimony in both state and federal courts in capital defense, research and writing in systemic areas of criminal defense, and serving as the curriculum coordinator for NLADA's *Life in the Balance* capital defense training. Before returning to her home state of Texas, where she still resides, Phyllis practiced exclusively criminal defense — trial and appeal, state and federal — in Louisiana. At various times in her career she served as a public defender for Rapides Parish, as an appellate public defender for the Louisiana Appellate Project, as a court appointed capital defender certified by the Louisiana Indigent Defender Assistance Board, and as a court appointed CJA attorney for the Western and Middle Districts of Louisiana. In 2005, Phyllis secured the unanimous opinion from the Louisiana Supreme Court in *State v. Citizen & Tonguis*, establishing the authority for trial court judges to halt capital prosecutions in Louisiana where there is no funding for the defense of the accused. Following Hurricane Katrina, she established and led an *ad hoc* group of criminal defense attorneys in their pro bono efforts to interview, counsel, and document the approximately 8,500 prisoners and detainees evacuated from south-eastern Louisiana jails and to represent them where appropriate in *habeas corpus* and bond proceedings. She received the 2006 *Arthur von Briesen Award* from NLADA for her contributions as a private attorney to indigent defense in Louisiana. Phyllis is a past president of the Louisiana Association of Criminal Defense

Lawyers and was the recipient of LACDL's 2005 *Justice Albert Tate Jr. Award* for lifetime achievement in criminal defense.

**Jon Mosher** is research associate for the Defender Legal Services' Research & Evaluations department of the National Legal Aid & Defender Association. He assists in the direction of NLADA's numerous standards-based assessments of indigent defense systems, including: a statewide assessment of the right to counsel Idaho's trial courts (the report, primarily authored by Mosher, was released January 2010); a statewide evaluation of trial-level right to counsel systems in Michigan; an evaluation of public defender services in Hamilton County (Cincinnati), Ohio; a study of public defense in Orleans Parish (New Orleans) Louisiana; an evaluation of the Idaho State Appellate Defender's Office; and a study of public defender services in the State of New York. He joined NLADA in 2003 as resource coordinator with Defender Legal Services, serving as primary staff liaison to the American Council of Chief Defenders. He is a graduate of George Washington University.

**Yvonne Segars** is Public Defender for the State of New Jersey, and has been a defense attorney for 20 years. Prior to her appointment in 2002, she served as the Chief Managing Attorney in Essex County, the largest office of the public defender region in New Jersey. Earlier she served as bond counsel with the NJ firm of McManimon & Scotland, LLC gaining experience in municipal finance and transactional law. Segars is a member of the Defender Policy Group for the National Legal Aid and Defender Association (NLADA); Vice-Chair of the NJ State Sentencing Commission; a member of the New Jersey State Criminal Disposition Commission and the NJ Domestic Violence Fatality and Near Fatality Review Board. She sits on the Board of Advisors for the Office of the Child Advocate, the Division of Youth and Family Services Staffing and Outcome Review Panel, and is Chairwoman of that group's Subcommittee on Juveniles in Detention.

Segars was the 2005 recipient of Kean University's Doctor of Laws Honorary Degree. In 2004 she received the Rutgers Law School Distinguished Alumna Award and the Leadership Award from the Association of Black Women Lawyers. She received her J.D. from Rutgers School of Law, Newark, and her B.A. in psychology from Kean University.

**Wesley Shackelford** is Deputy Director/Special Counsel to the Task Force on Indigent Defense (TFID). He develops standards and policies for the provision of indigent defense services. He provides legal advice on the issue to judges, counties, and the Task Force. He also speaks about indigent defense issues to stakeholders and policymakers. He has been with TFID since 2002. Wesley previously served as Senior Staff Attorney for the Texas Juvenile Probation Commission (TJPC) from 1995-2002. He was the intergovernmental relations' specialist for TJPC and provided information to legislators and other state agencies. Wesley also responded to inquiries on juvenile justice law from judges, probation officers, and prosecutors, as well as, speaking regularly on juvenile law and progressive sanctions. Prior to TJPC, Wesley was employed as a research associate at the Senate Research Center and a research associate at the Texas Legislative Council. Wesley graduated from the University of Texas at Austin with a B.A. in Government in 1990. He received his Doctor of Jurisprudence in 1994 from the University of Texas



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School of Law and was licensed to practice law in 1994. He is a member of the Juvenile Law Section of the State Bar of Texas.

**Jo-Ann Wallace** is the President and CEO of the National Legal Aid & Defender Association. She was previously NLADA's Senior Vice President for Programs. This position was responsible for oversight of both the Civil Legal Aid and Indigent Defense Program agendas. From 1994 – 2000, Ms. Wallace served as Director of the Public Defender Service for the District of Columbia (PDS), widely regarded as the nation's model defender agency. During Ms. Wallace's tenure, the PDS budget and staff more than doubled as the agency aggressively implemented progressive criminal justice reforms. Before her appointment to Director, Ms. Wallace served the agency in a number of capacities: Deputy Chief of the Appellate Division; Coordinator of the Juvenile Services Program; and as a staff attorney representing both juvenile and adults in trial and appellate litigation.

Ms. Wallace served on the NLADA Board of Directors from 1995–99, including serving as Chairperson in 1999. She also chaired the NLADA Defender Council, 1989–90, and the National Blue Ribbon Advisory Panel on Defender Services, a joint project with the United States Department of Justice (USDJ), 1995–96. Ms. Wallace was a founding Co-Chair of the Chief Defender Roundtable, now named the American Council of Chief Defenders (ACCD), a leadership council of top defender executives from across the United States. Ms. Wallace has served as a member of the American Bar Association Criminal Justice Standards Committee. She has significant experience as an expert on criminal justice and indigent defense issues, including serving as a consultant to the United States Department of Justice, local government entities and indigent defense programs. Ms. Wallace is a graduate of New York University School of Law.

**Gary Windom** is the Chief Public Defender for the Law Offices of the Public Defender for the County of Riverside, California. He is presently Vice-Chair of NLADA, and on the board and past chair of the American Council of Chief Defenders. Gary is Past Chair and current Management Chair of the California Public Defender's Association. He is also the Chair of the California Council of Chief Defenders. He is the 2009 recipient of the Bernard E. Witkin Amicus Curiae Award, presented by the Judicial Council of California, Administrative Office of the Courts.





## **Appendix C:**

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### **Lafayette Parish:**

Arraignments

CINC proceedings

Felony Trial Docket

Probation Revocation Docket

Drug Probation Revocation Docket

### **Vermilion Parish:**

72-hour hearings

CINC proceedings

Juvenile traffic & misdemeanor

Misdemeanor Trial Docket

Traffic court

## Interviews

### **Administrators:**

John Comeaux

Vermilion Parish Clerk of Court

Mona Hebert

Abbeville City Court Clerk of Court

### **District Attorney's Office:**

Ted Ayo

Assistant District Attorney

Michelle Billeaud

Assistant District Attorney

Bart J. Bellaire

Assistant District Attorney

Roger P. Hamilton, Jr.

Assistant District Attorney

Michael Harson

15th JDC District Attorney

Aimee F. Hebert

Assistant District Attorney

Laurie Hulin

Assistant District Attorney

Angie Wagar

Assistant District Attorney

### **Indigent Defender Office:**

Valex Amos

Lafayette IDO Attorney

David Balfour

District Defender

Gerald Block

Lafayette IDO Attorney

April Broussard

IDO Office Manager

Bart Broussard

Vermilion IDO Attorney

Lloyd Dangerfield

Lafayette IDO Attorney

James Dixon, Jr.

Lafayette IDO Attorney

Burleigh Doga

Acadia IDO Attorney

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Gabe Duhon  
Vermilion IDO Attorney

Kay Gautreaux  
Lafayette IDO Attorney

Annette Guidry  
Acadia IDO Staff

Burton Guidry  
Vermilion IDO Attorney

Nicole Guidry  
Vermilion IDO Attorney

Rhett Harrington  
Acadia IDO Attorney  
Kim Hayes  
Acadia IDO Attorney

Glenn Howie  
Acadia IDO Attorney

Remy Jardell  
Lafayette IDO Attorney

Roshell Jones  
Lafayette IDO Attorney

James Landry  
Acadia IDO Attorney

Michael Landry  
Acadia IDO Attorney

Clay Lejuene  
Acadia IDO Attorney

Randy McCann  
Lafayette IDO Attorney

Lindsay McManus  
Lafayette IDO Staff

Ron Melebeck  
Vermilion IDO Attorney

Danielle Menard  
Lafayette/Vermilion IDO Staff

Richard Mere  
Lafayette IDO Attorney

Vivian Neumann  
Lafayette IDO Attorney

Jack Nickel  
Acadia IDO Attorney

JoAnn Nixon  
Vermilion IDO Attorney

James Kirk Piccione  
Lafayette IDO Attorney

Allyson Prejean  
Lafayette IDO Attorney

Jennifer Robinson  
Lafayette IDO Attorney

Julie Rosenzweig  
Vermilion IDO Attorney

Jan Rowe  
Vermilion IDO Attorney

Brett Stefanski  
Acadia IDO Attorney

Chris St. Julien  
15th IDO office manager/paralegal

Kim Thibodeaux  
Lafayette IDO Staff

Patricia Thomas  
Vermilion IDO Attorney

Linda Veazy  
Lafayette IDO Attorney

**Investigators:**

Russell Ancelet

Roy Givens

**Judges:**

Hon. Ed Broussard  
District Court Div. C

Hon. Marilyn C. Castle  
District Court Div. L

Hon. Durwood Conque  
District Court Div. G

Hon. James M. Cunningham III  
Rayne City Court

Hon. Thomas R. Duplantier  
District Court Div. I

Hon. Jules Edwards  
District Court Div. B

Hon. Glen Everett  
District Court Div. F

Hon. Thomas J. Frederick  
Commissioner

Hon. Patrick L. Michot  
District Court Div. K

Hon. Richard Putnam III  
Abbeville City Court

Hon. Edward D. Rubin  
District Court Div. D

Hon. Doug Saloom  
Lafayette City Court

Hon. John D. Trahan  
District Court Div. A

Hon. Marie B. Trahan  
Crowley City Court

**Law Enforcement and OCS:**

Michael Couvillion  
Vermilion Parish Sheriff

Michael Hoffpauir  
15th JDC Probation & Parole  
District Administrator

Rachel Goldsmith  
15th JDC Misdemeanor Probation Division  
Supervising Officer

Eby Henry  
Acadia Parish Correctional Center Warden

Michael Neustrom  
Lafayette Parish Sheriff

Rob Reardon  
Lafayette Parish Director of Jail

Anonymous  
Lafayette Parish Social Workers

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**April 2010**



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The National Legal Aid & Defender Association (NLADA), founded in 1911, is the oldest and largest national, non-profit membership organization devoting all of its resources to advocating equal access to justice for all Americans. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal services and public defense services throughout the nation and provides a wide range of services and benefits to its individual and organizational members.

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**Appendix A:**  
***ABA Ten Principles of a Public Defense  
Delivery System***

**1** The public defense function, including the selection, funding, and payment of defense counsel,<sup>1</sup> is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.<sup>2</sup> To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.<sup>3</sup> Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.<sup>4</sup> The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>5</sup>

**2** Where the caseload is sufficiently high,<sup>6</sup> the public defense delivery system consists of both a defender office<sup>7</sup> and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.<sup>8</sup> The appointment process should never be ad hoc,<sup>9</sup> but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.<sup>10</sup> Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure respon-

sible for ensuring uniform quality statewide.<sup>11</sup>

**3** Clients are screened for eligibility,<sup>12</sup> and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request,<sup>13</sup> and usually within 24 hours thereafter.<sup>14</sup>

**4** Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.<sup>15</sup> Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.<sup>16</sup> To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.<sup>17</sup>

**5** Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by fac-

tors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>

**6 Defense counsel's ability, training, and experience match the complexity of the case.** Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.<sup>21</sup>

**7 The same attorney continuously represents the client until completion of the case.** Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

**8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be

let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases,<sup>25</sup> and separately fund expert, investigative, and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

**9 Defense counsel is provided with and required to attend continuing legal education.** Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.<sup>28</sup>

**10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.** The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.<sup>29</sup>

<sup>1</sup> “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

<sup>2</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter “NAC”], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “NSC”], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA”], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter “Assigned Counsel”], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter “Contracting”], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter “Model Act”], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1(D).

<sup>3</sup> NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter “ABA Monitoring”], Standard 3.2.

<sup>4</sup> Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Inde-

pendence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

<sup>6</sup> “Sufficiently high” is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

<sup>7</sup> NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. “Defender office” means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>10</sup> ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

<sup>11</sup> NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).



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<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

<sup>13</sup> NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3. 15 American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter “ABA Defense Function”], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter “Performance Guidelines”], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

<sup>18</sup> NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare,

and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

<sup>20</sup> ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter “Appellate”], Standard 1-F.

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

<sup>22</sup> NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

<sup>23</sup> NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

<sup>25</sup> NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

<sup>28</sup> NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III- 17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

<sup>29</sup> NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

## **Appendix B:**

### **NLADA Research Team Bios**

**T. Patton Adams** is the Executive Director of the South Carolina Commission on Indigent Defense which oversees the indigent defense system in the state. He was instrumental in achieving legislation which merged appellate defense services with the rest of the state's indigent defense system; and subsequently led efforts in 2007 which resulted in a unified, statewide public defender system and a 50 percent increase in state appropriated funding. He is a graduate of Washington & Lee University and the University of South Carolina School of Law, a former Mayor of Columbia, SC, and a member of the Charleston School of Law Board of Advisors. He has previously participated in NLADA-NDLI training for the Louisiana Public Defender Board, and as a panelist at the February 2010 Department of Justice Symposium, and is a member of the American Council of Chief Defenders and the NLADA Defender Policy Group.

**James D. Bethke** serves as the director of the Texas Task Force on Indigent Defense charged with implementing a statewide system of standards, financing and other resources for criminal defendants unable to hire attorneys. He also serves as the presiding officer of the Timothy Cole Advisory Panel on Wrongful Convictions. He is a member of the Texas Criminal Justice Integrity Unit. He is a past-chair Juvenile Law Exam Commission for the Texas Board of Legal Specialization. He currently serves on the Indigent Defense Advisory Group (IDAG) for the ABA Standing Committee for Legal Aid and Indigent Defendants. He is a U.S. Army veteran from the 101st Airborne Division, is a graduate of the University of Texas at Tyler and the Texas Tech University law school.

**David Carroll** is the director of research and evaluation in Defender Legal Services division of the National Legal Aid & Defender Association. Mr. Carroll has conducted assessments of the right to counsel in numerous jurisdictions across the country, including: Montana, New York, the District of Columbia, Hamilton County (Cincinnati) Ohio, Clark County (Las Vegas) Nevada, Santa Clara County (San Jose) California, and Venango County (Franklin) Pennsylvania. He is currently serving as an advisor to the Nevada Supreme Court Task Force on Indigent Defense and providing technical assistance to the Idaho State Criminal Justice Planning Commission.

NLADA's report, *A Race to the Bottom: Speed & Savings over Due Process*, details the extent to which the Constitutional right to counsel is inadequately enforced in criminal courts throughout Michigan. The report — conducted on behalf of the Michigan Legislature per joint resolution (SCR 39) in conjunction with the State Bar of Michigan — shows that few Michigan counties have evolved beyond the parameters of the early twentieth century systemic defense delivery model described in the Scottsboro Boys case [*Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)].

In 2004, NLADA released *In Defense of Public Access to Justice*, a comprehensive report detailing the impact Louisiana's systemic indigent defense deficiencies had on one judicial district — Avoyelles Parish. A legislative Task Force on Indigent Defense subsequently retained Carroll to advise them on different models for delivering indigent defense services. The Louisiana State Bar retained NLADA to document issues in post-Katrina New Orleans and to create a road map for a legislative fix to the state's systemic deficiencies. The second report, primarily authored by Carroll and released in September 2006, was the starting point for a legislative advisory group put together by the

## National Legal Aid & Defender Association

chair of the House Criminal Justice Committee that eventually led to the passage of the Louisiana Public Defender Act of 2007.

**Karl Doss** is director of Training & Community Education for the National Legal Aid & Defender Association. He joined NLADA in 2009 as staff attorney with NLADA's Defender Legal Services. During his 23 years as a lawyer, Karl has been admitted to practice law in Minnesota, New York, and Virginia and has held a numerous positions, including: assistant public defender in Hennepin County, Minnesota; assistant county attorney in Hennepin County; referee of the Hennepin County Family Court; law guardian in the Brooklyn (NY) Family Court; deputy public defender in Norfolk, Virginia; director of training for the Virginia Indigent Defense Commission; and director of Judicial Programs with the Supreme Court of Virginia.

**Richard Goemann** recently left the National Legal Aid & Defender Association to join D.C. Law Students in Court as the organization's executive director. From 2006-10, he served as the director of Defender Legal Services for the NLADA. Previously, Goemann was an Assistant Federal Public Defender for the Eastern District of Virginia and served as the Executive Director for Virginia's Indigent Defense Commission, and as the Executive and Deputy Director for the IDC's predecessor agency, the Public Defender Commission. Richard also served as the Public Defender for Fairfax, Virginia, and was an assistant and senior assistant public defender in Alexandria, Virginia. Goemann received his J.D. degree from New York University School of Law, and was selected as an E. Barrett Prettyman Graduate Fellow at Georgetown University Law Center where he earned an LL.M. degree in Advocacy.

**Phyllis Mann** is the director of the National Defender Leadership Institute, within the National Legal Aid & Defender Association. Prior to joining NLADA, she was a consultant in criminal defense, providing expert testimony in both state and federal courts in capital defense, research and writing in systemic areas of criminal defense, and serving as the curriculum coordinator for NLADA's *Life in the Balance* capital defense training. Before returning to her home state of Texas, where she still resides, Phyllis practiced exclusively criminal defense — trial and appeal, state and federal — in Louisiana. At various times in her career she served as a public defender for Rapides Parish, as an appellate public defender for the Louisiana Appellate Project, as a court appointed capital defender certified by the Louisiana Indigent Defender Assistance Board, and as a court appointed CJA attorney for the Western and Middle Districts of Louisiana. In 2005, Phyllis secured the unanimous opinion from the Louisiana Supreme Court in *State v. Citizen & Tonguis*, establishing the authority for trial court judges to halt capital prosecutions in Louisiana where there is no funding for the defense of the accused. Following Hurricane Katrina, she established and led an *ad hoc* group of criminal defense attorneys in their pro bono efforts to interview, counsel, and document the approximately 8,500 prisoners and detainees evacuated from south-eastern Louisiana jails and to represent them where appropriate in *habeas corpus* and bond proceedings. She received the 2006 *Arthur von Briesen Award* from NLADA for her contributions as a private attorney to indigent defense in Louisiana. Phyllis is a past president of the Louisiana Association of Criminal Defense

Lawyers and was the recipient of LACDL's 2005 *Justice Albert Tate Jr. Award* for lifetime achievement in criminal defense.

**Jon Mosher** is research associate for the Defender Legal Services' Research & Evaluations department of the National Legal Aid & Defender Association. He assists in the direction of NLADA's numerous standards-based assessments of indigent defense systems, including: a statewide assessment of the right to counsel Idaho's trial courts (the report, primarily authored by Mosher, was released January 2010); a statewide evaluation of trial-level right to counsel systems in Michigan; an evaluation of public defender services in Hamilton County (Cincinnati), Ohio; a study of public defense in Orleans Parish (New Orleans) Louisiana; an evaluation of the Idaho State Appellate Defender's Office; and a study of public defender services in the State of New York. He joined NLADA in 2003 as resource coordinator with Defender Legal Services, serving as primary staff liaison to the American Council of Chief Defenders. He is a graduate of George Washington University.

**Yvonne Segars** is Public Defender for the State of New Jersey, and has been a defense attorney for 20 years. Prior to her appointment in 2002, she served as the Chief Managing Attorney in Essex County, the largest office of the public defender region in New Jersey. Earlier she served as bond counsel with the NJ firm of McManimon & Scotland, LLC gaining experience in municipal finance and transactional law. Segars is a member of the Defender Policy Group for the National Legal Aid and Defender Association (NLADA); Vice-Chair of the NJ State Sentencing Commission; a member of the New Jersey State Criminal Disposition Commission and the NJ Domestic Violence Fatality and Near Fatality Review Board. She sits on the Board of Advisors for the Office of the Child Advocate, the Division of Youth and Family Services Staffing and Outcome Review Panel, and is Chairwoman of that group's Subcommittee on Juveniles in Detention.

Segars was the 2005 recipient of Kean University's Doctor of Laws Honorary Degree. In 2004 she received the Rutgers Law School Distinguished Alumna Award and the Leadership Award from the Association of Black Women Lawyers. She received her J.D. from Rutgers School of Law, Newark, and her B.A. in psychology from Kean University.

**Wesley Shackelford** is Deputy Director/Special Counsel to the Task Force on Indigent Defense (TFID). He develops standards and policies for the provision of indigent defense services. He provides legal advice on the issue to judges, counties, and the Task Force. He also speaks about indigent defense issues to stakeholders and policymakers. He has been with TFID since 2002. Wesley previously served as Senior Staff Attorney for the Texas Juvenile Probation Commission (TJPC) from 1995-2002. He was the intergovernmental relations' specialist for TJPC and provided information to legislators and other state agencies. Wesley also responded to inquiries on juvenile justice law from judges, probation officers, and prosecutors, as well as, speaking regularly on juvenile law and progressive sanctions. Prior to TJPC, Wesley was employed as a research associate at the Senate Research Center and a research associate at the Texas Legislative Council. Wesley graduated from the University of Texas at Austin with a B.A. in Government in 1990. He received his Doctor of Jurisprudence in 1994 from the University of Texas

## National Legal Aid & Defender Association

School of Law and was licensed to practice law in 1994. He is a member of the Juvenile Law Section of the State Bar of Texas.

**Jo-Ann Wallace** is the President and CEO of the National Legal Aid & Defender Association. She was previously NLADA's Senior Vice President for Programs. This position was responsible for oversight of both the Civil Legal Aid and Indigent Defense Program agendas. From 1994 – 2000, Ms. Wallace served as Director of the Public Defender Service for the District of Columbia (PDS), widely regarded as the nation's model defender agency. During Ms. Wallace's tenure, the PDS budget and staff more than doubled as the agency aggressively implemented progressive criminal justice reforms. Before her appointment to Director, Ms. Wallace served the agency in a number of capacities: Deputy Chief of the Appellate Division; Coordinator of the Juvenile Services Program; and as a staff attorney representing both juvenile and adults in trial and appellate litigation.

Ms. Wallace served on the NLADA Board of Directors from 1995–99, including serving as Chairperson in 1999. She also chaired the NLADA Defender Council, 1989–90, and the National Blue Ribbon Advisory Panel on Defender Services, a joint project with the United States Department of Justice (USDJ), 1995–96. Ms. Wallace was a founding Co-Chair of the Chief Defender Roundtable, now named the American Council of Chief Defenders (ACCD), a leadership council of top defender executives from across the United States. Ms. Wallace has served as a member of the American Bar Association Criminal Justice Standards Committee. She has significant experience as an expert on criminal justice and indigent defense issues, including serving as a consultant to the United States Department of Justice, local government entities and indigent defense programs. Ms. Wallace is a graduate of New York University School of Law.

**Gary Windom** is the Chief Public Defender for the Law Offices of the Public Defender for the County of Riverside, California. He is presently Vice-Chair of NLADA, and on the board and past chair of the American Council of Chief Defenders. Gary is Past Chair and current Management Chair of the California Public Defender's Association. He is also the Chair of the California Council of Chief Defenders. He is the 2009 recipient of the Bernard E. Witkin Amicus Curiae Award, presented by the Judicial Council of California, Administrative Office of the Courts.





## **Appendix C:**

### **List of Interviews & Observations**

## Court Observations

### **Acadia Parish:**

CINC proceedings

### **Lafayette Parish:**

Arraignments

CINC proceedings

Felony Trial Docket

Probation Revocation Docket

Drug Probation Revocation Docket

### **Vermilion Parish:**

72-hour hearings

CINC proceedings

Juvenile traffic & misdemeanor

Misdemeanor Trial Docket

Traffic court

## Interviews

### **Administrators:**

John Comeaux

Vermilion Parish Clerk of Court

Mona Hebert

Abbeville City Court Clerk of Court

### **District Attorney's Office:**

Ted Ayo

Assistant District Attorney

Michelle Billeaud

Assistant District Attorney

Bart J. Bellaire

Assistant District Attorney

Roger P. Hamilton, Jr.

Assistant District Attorney

Michael Harson

15th JDC District Attorney

Aimee F. Hebert

Assistant District Attorney

Laurie Hulin

Assistant District Attorney

Angie Wagar

Assistant District Attorney

### **Indigent Defender Office:**

Valex Amos

Lafayette IDO Attorney

David Balfour

District Defender

Gerald Block

Lafayette IDO Attorney

April Broussard

IDO Office Manager

Bart Broussard

Vermilion IDO Attorney

Lloyd Dangerfield

Lafayette IDO Attorney

James Dixon, Jr.

Lafayette IDO Attorney

Burleigh Doga

Acadia IDO Attorney

## National Legal Aid & Defender Association

Gabe Duhon  
Vermilion IDO Attorney

Kay Gautreaux  
Lafayette IDO Attorney

Annette Guidry  
Acadia IDO Staff

Burton Guidry  
Vermilion IDO Attorney

Nicole Guidry  
Vermilion IDO Attorney

Rhett Harrington  
Acadia IDO Attorney  
Kim Hayes  
Acadia IDO Attorney

Glenn Howie  
Acadia IDO Attorney

Remy Jardell  
Lafayette IDO Attorney

Roshell Jones  
Lafayette IDO Attorney

James Landry  
Acadia IDO Attorney

Michael Landry  
Acadia IDO Attorney

Clay Lejuene  
Acadia IDO Attorney

Randy McCann  
Lafayette IDO Attorney

Lindsay McManus  
Lafayette IDO Staff

Ron Melebeck  
Vermilion IDO Attorney

Danielle Menard  
Lafayette/Vermilion IDO Staff

Richard Mere  
Lafayette IDO Attorney

Vivian Neumann  
Lafayette IDO Attorney

Jack Nickel  
Acadia IDO Attorney

JoAnn Nixon  
Vermilion IDO Attorney

James Kirk Piccione  
Lafayette IDO Attorney

Allyson Prejean  
Lafayette IDO Attorney

Jennifer Robinson  
Lafayette IDO Attorney

Julie Rosenzweig  
Vermilion IDO Attorney

Jan Rowe  
Vermilion IDO Attorney

Brett Stefanski  
Acadia IDO Attorney

Chris St. Julien  
15th IDO office manager/paralegal

Kim Thibodeaux  
Lafayette IDO Staff

Patricia Thomas  
Vermilion IDO Attorney

Linda Veazy  
Lafayette IDO Attorney

**Investigators:**

Russell Ancelet

Roy Givens

**Judges:**

Hon. Ed Broussard  
District Court Div. C

Hon. Marilyn C. Castle  
District Court Div. L

Hon. Durwood Conque  
District Court Div. G

Hon. James M. Cunningham III  
Rayne City Court

Hon. Thomas R. Duplantier  
District Court Div. I

Hon. Jules Edwards  
District Court Div. B

Hon. Glen Everett  
District Court Div. F

Hon. Thomas J. Frederick  
Commissioner

Hon. Patrick L. Michot  
District Court Div. K

Hon. Richard Putnam III  
Abbeville City Court

Hon. Edward D. Rubin  
District Court Div. D

Hon. Doug Saloom  
Lafayette City Court

Hon. John D. Trahan  
District Court Div. A

Hon. Marie B. Trahan  
Crowley City Court

**Law Enforcement and OCS:**

Michael Couvillion  
Vermilion Parish Sheriff

Michael Hoffpauir  
15th JDC Probation & Parole  
District Administrator

Rachel Goldsmith  
15th JDC Misdemeanor Probation Division  
Supervising Officer

Eby Henry  
Acadia Parish Correctional Center Warden

Michael Neustrom  
Lafayette Parish Sheriff

Rob Reardon  
Lafayette Parish Director of Jail

Anonymous  
Lafayette Parish Social Workers

**Appendix D:**  
**Variable Fund Retainer Contract,**  
**sample 2009**

**VARIABLE FUND RETAINER CONTRACT**  
**15<sup>TH</sup> JUDICIAL DISTRICT PUBLIC DEFENDER PROGRAM**  
**STATE OF LOUISIANA**  
**PARISHES OF ACADIA, LAFAYETTE AND VERMILION**

The 15<sup>th</sup> Judicial District Public Defender Program, through the District Public Defender, hereinafter referred to as **The Program**, pursuant to **R.S. 15:146 et seq** does hereby retain under the following conditions and terms of this contract, **DAVID BALFOUR**, 115 West Main Lafayette, LA 70501 hereinafter referred to as **COUNSEL**.

**DUTIES OF COUNSEL**

1. A. Counsel is retained to represent clients assigned to Counsel by The Program. This includes all forms of representation beginning with post-indictment proceedings, through trial and notice of appeal if necessary. Where appropriate this will include but shall not be limited to the following:

- Counsel agrees to personally or through an approval representative meet each assigned client within 72 hours of appointment if that client is incarcerated;
- If the client has been released from incarceration counsel is to attempt to communicate with client by mail within 72 hours of appointment;
- At the time of the initial contact with client, Counsel is to inform client of the nature of the pending charge(s) and the of the potentially sentence(s) for the alleged offense(s);
- Post indictment bond reduction if necessary;
- Counsel is to communicate with client on a regular recurring basis informing client of the evidence against him/her, the necessity of and/or the status of pre-trial motions, the necessity of and/or status of investigation and the status of trial preparations;
- Sentencing litigation, including Habitual Offender Sentencing;
- Preparation and filing of Motion to Reconsider Sentence if appropriate or necessary;
- Filing of Motion and order for Appeal if appropriate or necessary;
- Filing of Reports and forms as required by the Louisiana Appellate Project;
- Counsel may be required to represent clients at Probation Revocation Hearings or Proceedings;

1. B. Counsel agrees not to retain or otherwise hire experts, investigators or incur any expenses on behalf of the client without prior approval of The Program. The hiring of any expert/investigator without such approval will result in Counsel's being personally responsible for any fees, charges or expenses of such individuals. The Program may at his discretion approve an increase in fees paid to any expert/investigator previously approved.

1. C. Counsel understands and agrees that the services provided to clients of The Program shall be in every way equivalent to those Counsel would otherwise provide to any non-appointed clients. Without exception, Counsel agrees that appointed clients shall have the same access, services and courtesies as any client of Counsel and as expected by client from lawyers generally and as provided by Counsel to clients otherwise represented. This includes, but is not limited to office visits, jail visits, telephone contact and other communication.

1. D. Representation provided by Counsel is not subject to detailed instruction from The Program as to how to achieve representation of the clients. However, The Program may establish general guidelines or may prohibit certain acts or practices of Counsel as it deems appropriate. In all aspects Counsel is a general contractor whose obligations to deliver legal representation to clients in accordance with the Constitutions of the United States and the State of Louisiana, Louisiana Law, the rules of ethics of the Louisiana State Court and the local rules of the 15<sup>th</sup> Judicial District Court.

1. E. Counsel agrees to attend an approved Continuing Legal Education Seminar and obtain not less than half the required hours set by Louisiana Bar Association in Criminal Law related to work provided under this contract. Counsel will maintain sufficient records to certify same and provide a copy of those records to The Program by the end of this contract year. Reimbursement of up to \$300 for tuition shall be provided by The Program upon written request and proof of attendance from Counsel. Counsel further agrees to participate in periodic training/educational sessions deemed necessary by The Program.

1. F. Counsel understands and agrees to follow the mandated policies and procedures of The Program in connection with maintaining accurate and up to date data entry into the State Data Control System and any other similar data accounting system mandated by the Program.

### **WORK PRODUCT, OFFICE, PLEADINGS, SUPPLIES**

2. A. Counsel is expected to have an active, ongoing law practice, with a physical address. Counsel shall provide office work product, secretarial, receptionist, telephone, telephone answering, fax, postage, copies and all other standard services. The cost of these services and expenses remain solely the expense of Counsel and Counsel's responsibility.

2. B. Counsel shall provide all office supplies, including stationery and shall conduct representation under Counsel's letterhead and address. The Program shall provide an initial folder with intake information on the case.

2. C. Office Space of The Program in various parishes of the 15<sup>th</sup> Judicial District shall not be subject to use by Counsel for any private retained work and the equipment of The Program is solely for the use of office staff or other persons specifically authorized by The District Defender.

### **RETAINER**

3A. Counsel is more specifically assigned to **District Defender and Felonies**. The duties and obligations inherent in this assignment will include all of the above when and where appropriate. This assignment is non-exclusive and is subject to change on direction of The Program. Counsel agrees to extra duty and stand-in duty from time to time as The Program may require and this provision is no bar or condition to reassignment.

3. B. The contract of Counsel herein is retained for a maximum annual retainer of **Ninety Six Thousand Four Hundred Dollars and 00/100 (\$96,400.00)** payable monthly and subject to the terms herein. Failure to comply with the terms of the contract may result in the monthly retainer amount being held by The Program until the District Defender has determined that Counsel is in compliance.

3. C. The contract herein is for a one year term subject to cancellation upon thirty days notice by Counsel, and without notice by The Program. Counsel shall abide by orders of the District Court and in any case wherein representation is essential after termination of this contract, Counsel agrees to remain enrolled in that particular case without compensation.

3.D. Counsel shall be automatically terminated upon suspension, disbarment or finding of probable cause for felony prosecution by a Grand Jury or Magistrate or for any conduct harmful to the administration of justice or the Public Defender Program. Upon termination counsel shall provide files, materials and work product to the Parish Office in order to facilitate assignment of new counsel.

3. E. Counsel shall abide by the laws of the State of Louisiana and the United States and may be subject to suspension without pay under circumstances prejudicial to the interests of clients of The Program. Counsel agrees that the judgment of The Chief on such questions is final and binding.

3. F. Failure to comply with any of the mandates of this contract may result in immediate cancelation of Counsel's contract.

### **TERM**

4. A. The resources of The Program are subject to fluctuation and variance according to conditions beyond control of The Program and the monthly sum due under this contract is due only to the extent that funds during the calendar month are sufficient to allow The Program to make such payment.

4. B. In any month wherein the retainer fund is insufficient to pay 100% of retainers, counsel and every other attorney under contract to The Program shall received a proportional share of the available fund up to the authorized maximum retainer. This calculation shall not include full time personnel. The Program is under no obligation and there shall be no indebtedness due to any shortfall in retainer payments and counsel has no claim under this contract for any such shortage. Counsel herein is not merely taking compensation, but his cause for entering this contract includes the gain of legal experience, court room exposure, knowledge and trial experience included in his service as Public Defender.

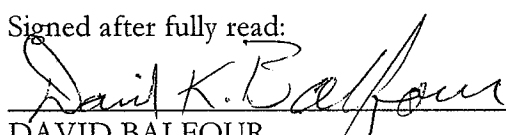
#### **PARTIALLY INDIGENT FEES**

5. A. Counsel acknowledges that under R.S. 15:146 et seq clients of The Program may be subject to assessment of partially indigent fees. Counsel hereby signifies understanding that any fees secured from the clients of The Program are solely the property of The Program and shall be remitted over to The Program immediately upon receipt. Counsel is neither authorized nor allowed to receive fees from clients of The Program for any matter subject to representation under this contract. Counsel shall remit to The Program any sums collected in connections with representation of the client of The Program and shall fully account to The Program for any retainers, gratuities or fees received from the client in connection with representation under order of appointment herein paid under the "Partially Indigent" provisions of the Statues.

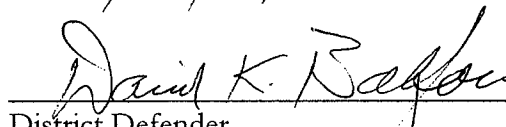
5. B. Should Counsel be approached by a client of The Program requesting to pay a private fee, Counsel shall advise The District Defender of the request for retainer, the terms of the potential retainer and whether in fact Counsel wishes to accept same. Counsel's retainer by an appointed client shall be subject to approval of The District Defender shall be reimbursed for any office expenses, cost or expenditures of any kind related to the case prior to the time Counsel was retained.

5. C. Counsel may accept private clients in any field of law, provided that Counsel will not maintain a caseload which is excessive or impairs Counsel's ability to adequately represent clients of The Program. In consideration of the retainer herein, Counsel agrees to make the clients assigned under this contract a priority.

Signed after fully read:

  
\_\_\_\_\_  
DAVID BALFOUR

Date: 1/29/09

  
\_\_\_\_\_  
District Defender

Date: 2/4/09



**Appendix E:**  
**Capital Variable Fund Retainer Contract,**  
**sample 2009**

**CAPITAL  
VARIABLE FUND RETAINER CONTRACT  
15<sup>TH</sup> JUDICIAL DISTRICT PUBLIC DEFENDER PROGRAM  
STATE OF LOUISIANA  
PARISHES OF ACADIA, LAFAYETTE AND VERMILION**

The 15<sup>th</sup> Judicial District Public Defender Program hereinafter referred to as **THE PROGRAM**, through the District Defender pursuant to R.S. 15:146 *et seq* does hereby retain under the conditions and terms of this contract, **JACK E. NICKEL**, Post Office Box 2040 Crowley, LA 70526, hereinafter referred to as **COUNSEL**.

**DUTIES OF COUNSEL**

1. A. Counsel is retained to represent clients assigned to Counsel by The Program. This includes all forms of representation beginning with post-indictment proceedings, through trial and notice of appeal if necessary. Where appropriate this will include but shall not be limited to the following:

- Counsel agrees to personally or through an approval representation immediately meet each assigned client if that client is incarcerated;
- If the client has been released from incarceration counsel is to attempt to communicate with client by mail immediately;
- At the time of the initial contact with client, Counsel is to inform client of the nature of the pending charge(s) and the of the potentially sentence(s) for the alleged offense(s);
- Post indictment bond reduction if necessary;
- The filing of appropriate discovery and or necessary motions is to be considered an on going process continuing throughout the prosecution;
- All necessary investigation is to begin immediately and is to continue throughout the prosecution;
- Counsel is to communicate with client on a regular recurring basis informing client of the evidence against him/her, the necessity of and/or the status of pre-trial motions, the necessity of and/or the status of investigation and the status of trial preparations;
- As soon as appropriate following appointment a comprehensive investigation into possible mitigation shall begin with immediate consideration given to retention of appropriate expert assistance
- Preparation and filing of Motion to Reconsider Sentence if appropriate or necessary;
- Filing of Motion and order for Appeal if appropriate or necessary is mandated;
- Preparation of reports and forms as required by the Louisiana Appellate Project;
- Obtaining and perfecting all paper work necessary to be certified as death penalty counsel from the State Indigent Defender Board

1. B. Counsel is retained to pursue bond setting prior to indictment, if at all possible, pursuant to LSA-Cr.P. art. 331 and appear at any hearing for such bond setting. This is the preferable procedure.

1. C. Any and all expert assistance is to be obtained through the Louisiana Public Defender Board, through the Office of the State Defender. Investigative assistance is to be obtained through The Program. If a Death Penalty prosecution is amended to a lesser charge and expert/investigator assistance from the Louisiana Public Defender Board ceases, Counsel agrees not to retain or otherwise hire experts, investigators or incur any expenses on behalf of the client without prior approval of The District Defender. The hiring of any expert/investigator without such approval will result in Counsel being personally responsible for any fees, charges or expenses of such individuals. The District Defender may at his discretion approve an increase in fees paid to any expert/investigator previously approved; however, it is understood that failure to obtain prior approval for any such increases shall result in counsel's being personally responsible for any unapproved fees/increases.

1. D. Counsel understands promises and agrees that the services provide to death penalty clients of The Program shall be in every way equivalent to those Counsel would otherwise represent. Without exception, Counsel agrees that clients shall have the same access, services and courtesies as any client of Counsel and as expected by clients from lawyers generally and as proved by Counsel to clients otherwise represented. This includes, but is not limited to office visits, telephone contact and other communication.

1. E. Counsel agrees to attend the necessary and required minimum hours of Death Penalty Continuing Legal Education approved by the Louisiana Supreme Court related to work and obligations provided under this contract, and will maintain sufficient records to certify same.

1. F. Counsel agrees to familiarize herself/himself with all Louisiana and U.S. Supreme Court Decisions related to death penalty case relevant in Louisiana.

## **WORK PRODUCT, OFFICE, PLEADINGS, SUPPLIES**

2. A. Counsel is expected to have an active, ongoing law practice, with a physical address. Counsel shall provide office work product, secretarial, receptionist, telephone, telephone answering, fax, postage, copies and all other standard services. The cost of these services and expenses remain solely the expense of Counsel and Counsel's responsibility.

2. B. Counsel shall provide all office supplies, including stationery and shall conduct representation under Counsel's letterhead and address. The Program shall provide an initial folder with intake information on the case.

2. C. Office Space of The Program in various parishes of the 15<sup>th</sup> Judicial District shall not be subject to use by Counsel for any private retained work and the equipment of The Program is solely for the use of office staff or other persons specifically authorized by The District Defender.

## **RETAINER**

3. A. At the discretion of The District Defender or The Capital Coordinator, Counsel can be assigned to represent client at the innocent/guilty phase of the prosecution or the penalty phase of the prosecution.

3. B. The contract of Counsel herein is retained for a maximum annual retainer of **TWELVE THOUSAND DOLLARS AND 00/100 (\$12,000.00)** payable in monthly increments along with Counsel's general retainer contract and subject to the terms herein; when counsel is assigned a defense role he a prosecution he/she will bill monthly in court and out court time at the rate of \$100.00 per hour for the duration of the prosecution, with the maximum billed amount not to exceed the monthly retainer amount; if the First Degree prosecution is reduced Counsel will submit a final bill with the prosecution being reassigned to a tract attorney; all hourly statements are to be submitted to the Capital Coordinator for review and approval for payment.

3. C. The contract herein is for a one year term subject to cancellation upon thirty days notice by Counsel, and without notice by The Program. Counsel shall abide by orders of the District Court and in any case wherein representation is essential after termination of this contract, Counsel agrees to remain enrolled in that particular case without compensation.

3. D. Counsel shall be automatically terminated upon suspension, disbarment or finding of probable cause for felony prosecution by a Grand Jury or Magistrate or for any conduct harmful to the administration of justice or the Public Defender Program. Upon termination counsel shall provide files, materials and work product to the Parish Office in order to facilitate assignment of new counsel.

3. E. Counsel shall abide by the laws of the State of Louisiana and the United States and may be subject to suspension without pay under circumstances prejudicial to the interests of clients of The Program. Counsel agrees that the judgment of The Chief on such questions is final and binding.

3. F. Failure to comply with any of the mandates of this contract may result in immediate cancelation of Counsel's contract.

## **TERM**

4. A. The resources of The Program are subject to fluctuation and variance according to conditions beyond control of The Program and the monthly sum due under this contract is due only to the extent that funds during the calendar month are sufficient to allow The Program to make such payment.

4. B. In any month wherein the retainer fund is insufficient to pay 100% of retainers, counsel and every other attorney under contract to The Program shall received a proportional share of the available fund up to the authorized maximum retainer. This calculation shall not include full time

personnel. The Program is under no obligation and there shall be no indebtedness due to any shortfall in retainer payments and counsel has no claim under this contract for any such shortage. Counsel herein is not merely taking compensation, but his cause for entering this contract includes the gain of legal experience, court room exposure, knowledge and trial experience included in his service as Public Defender.

#### **PARTIALLY INDIGENT FEES**

5. A. Counsel acknowledges that under R.S. 15:146 et seq clients of The Program may be subject to assessment of partially indigent fees. Counsel hereby signifies understanding that any fees secured from the clients of The Program are solely the property of The Program and shall be remitted over to The Program immediately upon receipt. Counsel is neither authorized nor allowed to receive fees from clients of The Program for any matter subject to representation under this contract. Counsel shall remit to The Program any sums collected in connections with representation of the client of The Program and shall fully account to The Program for any retainers, gratuities or fees received from the client in connection with representation under order of appointment herein paid under the "Partially Indigent" provisions of the Statues.

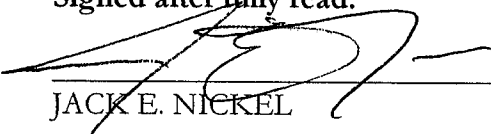
5. B. Should Counsel be approached by a client of The Program requesting to pay a private fee, Counsel shall advise The District Defender of the request for retainer, the terms of the potential retainer and whether in fact Counsel wishes to accept same. Counsel's retainer by an appointed client shall be subject to approval of The District Defender shall be reimbursed for any office expenses, cost or expenditures of any kind related to the case prior to the time Counsel was retained.

5. C. Counsel may accept private clients in any field of law, provided that Counsel will not maintain a caseload which is excessive or impairs Counsel's ability to adequately represent clients of The Program. In consideration of the retainer herein, Counsel agrees to make the clients assigned under this contract a priority.

#### **ADDITIONAL OBLIGATIONS**

The terms of this contract are in addition to and separate from the obligations and provisions contained in the Variable Fund Retainer Contract signed by counsel and The District Defender.

**Signed after fully read:**

  
\_\_\_\_\_  
JACK E. NICKEL

Date: 1-22-09

  
\_\_\_\_\_  
District Defender

Date: 2/4/09

**Appendix F:**  
**15th Judicial District Court calendars,**  
**April 20, 2009 – December 17, 2009,**  
**and February 25, 2010 – present**



**FIFTEENTH JUDICIAL DISTRICT COURT**

**2008-09 CRIMINAL CALENDAR**

**\*\*REVISED 4-20-09\*\***

Div. A -- TRAHAN

Div. E -- CLAUSE

Div. I -- DUPLANTIER

Div. M -- KEATY

Div. B -- EDWARDS

Div. F -- EVERETT

Div. J -- EARLES

Div. C -- BROUSSARD

Div. G -- CONQUE

Div. -- MICHOT

Comm. -- FREDERICK

Div. D -- RUBIN

Div. H -- BLANCHET

Div. L -- CASTLE

		ACA								LAF								VERM
2009		Felony Track				Pretrial Track				Juvenile	Fel./Misd. Arraign.	Traf. Arr. & Rules**	Misd. Trials	Traffic Trials				
		1	2	3	4	1	2	3	4									
JUNE	1			G														
	2			G							Comm							
	3			G								Comm**						
	4			G			G											
	5			G														
	8 - 12	LOUISIANA BAR ASSN CONFERENCE (confirmed)																
	15	K				C								A				
	16	K				C					E			A				
	17	K				C					E				A			
	18	K				C			C					A				
	19	K				C								C	A			
	22			B	L												G	
	23			B	L						D	Comm					G	
	24			B	L						D		Comm				G	
	25			B	L			B									G	
	26			B	L												G	
JULY	29 - 2	DA's CONFERENCE (confirmed)																
	3	4th of JULY HOLIDAY (observed)																
	6	F		J													L	
	7	F		J													L	
	8	F		J													L	
	9	F		J													L	
	10	F		J													L	
	13			D										E			G	
	14			D							I			E			G	
	15			D							I				E		G	
	16			D				D	I					E			G	
	17			D										D	E		G	
	20	A				F												
	21	A				F					E	Comm						
	22	A				F					E		Comm					
	23	A				F					E							
	24	A				F												
	27																	
	28																	
	29																	
	30																	
	31																	
AUGUST	3	J																
	4	J									D	Comm						
	5	J									D		Comm**					
	6	J																
	7	J																
	10					K									D		C	
	11					K									D		C	
	12					K										D	C	
	13					K		K							D		C	
	14					K									K	D	C	
	17		B	L													G	
	18		B	L								Comm					G	
	19		B	L									Comm				G	
	20		B	L				B									G	
	21		B	L													G	
	24	F				E											G	
	25	F				E											G	
	26	F				E											G	
	27	F				E											G	
	28	F				E											G	
SEPT	31																	
	1										I	Comm						
	2										I		Comm**					
	3																	

FELONY JURY WEEKS ARE DESIGNATED BY BOLD LETTERS

**FELONY JURY WEEKS ARE DESIGNATED BY BOLD LETTERS**



# FIFTEENTH JUDICIAL DISTRICT COURT

VERSION: 4/13/09

## 2009 CRIMINAL CALENDAR

Div. A -- TRAHAN  
Div. B -- EDWARDS  
Div. C -- BROUSSARD  
Div. D -- RUBIN

Div. E -- CLAUSE  
Div. F -- EVERETT  
Div. G -- CONQUE  
Div. H -- BLANCHET

Div. I -- DUPLANTIER  
Div. J -- EARLES  
Div. K -- MICHOT  
Div. L -- CASTLE

Div. M -- KEATY  
Comm. -- FREDERICK

FELONY JURY WEEKS ARE DESIGNATED BY **BOLD LETTERS**

		ACA				LAF										VERM	
2009		Felony Track				Pretrial Track				Juv.	Fel./Misd. Arraign.	Traf. Arr. & Rules**	Misd. Trials	Traffic Trials			
		1	2	3	4	1	2	3	4								
SEPTEMBER	7	MONDAY HOLIDAY (LABOR DAY)															
	8																
	9																
	10																
	11																
	14	F			A								C		K		
	15	F			A					E			C		K		
	16	F			A					E				C	K		
	17	F			A			A					C		K		
	18	F			A								A	C	K		
	21			B	K										G		
	22			B	K					I	Comm				G		
	23			B	K					I		Comm			G		
	24			B	K			B							G		
	25			B	K										G		
	28	A				L											
	29	A				L											
	30	A				L											
	OCTOBER	1	A				L			L							
		2	A				L										
5 - 9		OPENING CEREMONIES OF LOUISIANA SUPREME COURT															
12					F								K		C		
13					F								K		C		
14					F									K	C		
15					F				F				K		C		
16					F								F	K	C		
19		A	B														
20		A	B							D	Comm						
	21	A	B							D		Comm**					
	22	A	B				B	D									
	23	A	B														
	26	F				L									C		
	27	F				L				I	Comm				C		
	28	F				L				I		Comm			C		
	29	F				L			L						C		
	30	F				L									C		
	NOVEMBER	2	J		I											G	
		3	J		I						E					G	
4		J		I						E					G		
5		J		I				E							G		
6		J		I											G		
9					K												
10					K						Comm						
11		WEDNESDAY HOLIDAY (VETERANS' DAY)															
12					K					K							
13					K												
16	A	D								I	Comm		n/a		G		
17	A	D								I		Comm**	n/a		G		
18	A	D											n/a		G		
19	A	D				D			I				n/a		G		
20	A	D												D	G		
23																	
24																	
25																	
26 - 27	THANKSGIVING HOLIDAY																

Fel./Misd. Arraign. -- Felony & Misdemeanor Arraignments; Commissioner Frederick presiding.

Traf. Arr. & Rules\*\* -- Traffic Arraignments & Rules (usually probation status hearings);

Commissioner Frederick presiding. Rules are only included on those dates marked by "Comm\*\*".

Misd/Traf. Trial Week -- District Judge presiding over misdemeanor trials Mon., Tues., and Thurs.; traffic trials on Wed. and Fri.

Alternate Judge will preside over Fri. misdemeanor docket.

NOTE: No misdemeanor trials in Nov.; only Fri. traffic docket. No Fri. traffic docket in May.



## FIFTEENTH JUDICIAL DISTRICT COURT

VER. 2-25-10

**2010 COURT CALENDAR**

Div. A -- TRAHAN  
Div. B -- EDWARDS  
Div. C -- BROUSSARD

Div. D -- RUBIN  
Div. E -- CLAUSE  
Div. F -- EVERETT

Div. G -- CONQUE  
Div. H -- BLANCHET  
Div. I -- DUPLANTIER

Div. J -- EARLES  
Div. K -- MICHOT  
Div. L -- CASTLE  
Div. M -- KEATY

**NOTE:** All custody-related matters are heard before Judges David Blanchet and Phyllis Keaty (Divisions H and M, respectively), who preside over the Family Court section of the 15th JDC.

ALL TRIALS BEGIN ON MONDAY (FOLLOWING RULES) UNLESS OTHERWISE NOTED

WEEK BEGINNING	CRIMINAL						CIVIL			DUTY		
	ACA	LAF			VERM		ACA	LAF	VERM	ACA	LAF	VERM
		FEL	JUV	TRAF	MISD							
Jan. 4 - 8	15th JDC COURT OPENING											
Jan. 11 (Rules)	A	D	L	J	L	C	BI	FGK	E	M	F	E
Jan. 12 - 15	A	D	L	J	L	C	BI	FGK	E	M	F	E
Jan. 18	MONDAY HOLIDAY (MARTIN LUTHER KING, JR'S BIRTHDAY)											
Jan. 19 (Rules)	F	E					CK	ABI	JL	K	M	J
Jan. 20 - 22	F	E					CK	ABI	JL	K	M	J
Jan. 25 (Rules)		BK	I			G	EF	JL	A	E	J	A
Jan. 26 - 29		BK	I			G	EF	JL	A	E	J	A
Feb. 1 (Rules)	J	D	L				AG	EFIK	BC	M	K	C
Feb. 2 - 5	J	D	L				AG	EFIK	BC	M	K	C
Feb. 8 (Rules)		E		A	E	G	D	BCJ	IK	D	B	I
Feb. 9 - 12		E		A	E	G	D	BCJ	IK	D	B	I
Feb. 15	MONDAY HOLIDAY (PRESIDENTS' DAY)											
Feb. 16	TUESDAY HOLIDAY (MARDI GRAS)											
Feb. 17 (Rules)							BJL	DEGIK	F	J	D	F
Feb. 18 - 19							BJL	DEGIK	F	J	D	F
Feb. 22 (Rules)	F	BK	I			C	E	AJL	DG	E	I	M
Feb. 23 - 26	F	BK	I			C	E	AJL	DG	E	I	M
Mar. 1 (Rules)	A	E					DK	BCFGI	JL	K	M	L
Mar. 2 - 5	A	E					DK	BCFGI	JL	K	M	L
Mar. 8 (Rules)	J		L				AF	BCDEGK	I	F	G	I
Mar. 9 - 12	J		L				AF	BCDEGK	I	F	G	I
Mar. 15 (Rules)		D		K	D	G	C	AIL	EF	C	A	E
Mar. 16 - 19		D		K	D	G	C	AIL	EF	C	A	E
Mar. 22 (Rules)		B	I				G	DEFJL	ACK	G	E	K
Mar. 23 - 26		B	I				G	DEFJL	ACK	G	E	K
Mar. 29 (Rules)	F	EK				C	IJ	ABG	DL	I	B	L
Mar. 30 - Apr. 1	F	EK				C	IJ	ABG	DL	I	B	L
Apr. 2	FRIDAY HOLIDAY (GOOD FRIDAY)											
Apr. 5 (Rules)	A	D					B	J	G	B	J	G
Apr. 6 - 9	A	D					B	J	G	B	J	G
Apr. 12 (Rules)							DKL	ACEFG	BIJ	D	C	I
Apr. 13 - 14							DKL	ACEFG	BIJ	D	C	I
Apr. 15 - 18	SPRING CONFERENCE (confirmed)											
Apr. 19 (Rules)		K	L	F	K	G	ACE	DI		E	K	G
Apr. 20 - 23		K	L	F	K	G	ACE	DI		E	K	G
Apr. 26 (Rules)	J	B					F	CDEIKL	G	F	C	G
Apr. 27 - 30	J	B					F	CDEIKL	G	F	C	G
May 3 (Rules)		E	I			C	BG	FJKL	AD	B	I	D
May 4 - 7		E	I			C	BG	FJKL	AD	B	I	D
May 10 (Rules)	F	D		B	n/a		IJ	AG	CK	M	A	K
May 11 - 14	F	D		B	n/a		IJ	AG	CK	M	A	K
May 17 (Rules)	J	K	I			G	A	CDFL	B	A	F	B
May 18 - 21	J	K	I			G	A	CDFL	B	A	F	B
May 24 (Rules)		B	L			C	K	AEJ	FI	K	L	C
May 25 - 28		B	L			C	K	AEJ	FI	K	L	C
May 31	MONDAY HOLIDAY (MEMORIAL DAY)											
June 1 (Rules)	A	EK					L	BK	J	L	K	J
June 2 - 4	A	EK					L	BK	J	L	K	J
June 7 - 11	LA STATE BAR ASSN CONFERENCE (confirmed)											
June 14 (Rules)	J	B		I	B		C	DG	A	C	D	A
June 15 - 18	J	B		I	B		C	DG	A	C	D	A
June 21 (Rules)	A	DK	I			G	L	EF	BC	M	E	B
June 22 - 25	A	DK	I			G	L	EF	BC	M	E	B
June 28 - July 2	DA's CONFERENCE (confirmed)											
June 28 (Rules)							FG	ACIJK	EL	G	A	L
June 29 - July 2							FG	ACIJK	EL	G	A	L

JURY TRIALS ARE DESIGNATED IN BOLD LETTERS



# 2010 COURT CALENDAR

VER. 2-25-10

Div. A -- TRAHAN  
Div. B -- EDWARDS  
Div. C -- BROUSSARD

Div. D -- RUBIN  
Div. E -- CLAUSE  
Div. F -- EVERETT

Div. G -- CONQUE  
Div. H -- BLANCHET  
Div. I -- DUPLANTIER

Div. J -- EARLES  
Div. K -- MICHOT  
Div. L -- CASTLE  
Div. M -- KEATY

**NOTE:** All custody-related matters are heard before Judges David Blanchet and Phyllis Kealy (Divisions H and M, respectively), who preside over the Family Court section of the 15th JDC.

JURY TRIALS ARE DESIGNATED IN **BOLD LETTERS**

ALL TRIALS BEGIN ON MONDAY (FOLLOWING RULES) UNLESS OTHERWISE NOTED

WEEK BEGINNING	CRIMINAL						CIVIL						DUTY		
	ACA		LAF			VERM	ACA		LAF		VERM	ACA	LAF	VERM	
		FEL	JUV	MISD/ TRAF	FRI	MISD									
July 5	MONDAY HOLIDAY (4TH of JULY observed)														
July 6 (Rules)	J	E	L			C			BFG	K		J	G	K	
July 7 - 9	J	E	L			C			BFG	K		J	G	K	
July 12 (Rules)	F	B	I	J	B		D		EL	G		D	I	M	
July 13 - 16	F	B	I	J	B		D		EL	G		D	I	M	
July 19 (Rules)	F	D	L			G	E		ABJ	I		E	J	I	
July 20 - 23	F	D	L			G	E		ABJ	I		E	J	I	
July 26 (Rules)	A						BK		CIL	DEG		B	L	D	
July 27 - 30	A						BK		CIL	DEG		B	L	D	
Aug. 2 (Rules)		K				C	J		BD			J	B	G	
Aug. 3 - 6		K				C	J		BD			J	B	G	
Aug. 9 (Rules)	J	E	I	C	I		D		FK	BL		D	F	M	
Aug. 10 - 13	J	E	I	C	I		D		FK	BL		D	F	M	
Aug. 16 (Rules)	F	BD				G	CL		AEI	J		C	I	J	
Aug. 17 - 20	F	BD				G	CL		AEI	J		C	I	J	
Aug. 23 (Rules)	A	K	L			C	GI		BDJ	EF		I	L	E	
Aug. 24 - 27	A	K	L			C	GI		BDJ	EF		I	L	E	
Aug. 30 (Rules)		E					FJ		CGIL	AK		F	C	A	
Aug. 31 - Sept. 3		E					FJ		CGIL	AK		F	C	A	
Sept. 6	MONDAY HOLIDAY (LABOR DAY)														
Sept. 7 (Rules)		D	I				BEL		AFJK	CG		L	J	G	
Sept. 8 - 10		D	I				BEL		AFJK	CG		L	J	G	
Sept. 13 (Rules)	J	K		F	L	G	A		BCEIL	D		A	B	D	
Sept. 14 - 17	J	K		F	L	G	A		BCEIL	D		A	B	D	
Sept. 20 (Rules)	A	B	L				K		CDEGI	F		K	G	F	
Sept. 21 - 24	A	B	L				K		CDEGI	F		K	G	F	
Sept. 27 (Rules)		E				G	CDJ		FKL	AI		J	M	A	
Sept. 28 - Oct. 1		E				G	CDJ		FKL	AI		J	M	A	
Oct. 4 - 8	OPENING CEREMONIES OF LOUISIANA SUPREME COURT														
Oct. 11 (Rules)		K		A	K	C	F		D	BJ		F	D	B	
Oct. 12 - 15		K		A	K	C	F		D	BJ		F	D	B	
Oct. 18 (Rules)	A	B	L				Ei		CF	DK		I	M	K	
Oct. 19 - 22	A	B	L				Ei		CF	DK		I	M	K	
Oct. 25 (Rules)	F	D	I				AG		BEJK	CL		A	K	C	
Oct. 26 - 29	F	D	I				AG		BEJK	CL		A	K	C	
Nov. 1	MONDAY HOLIDAY (ALL SAINTS' DAY)														
Nov. 2	TUESDAY HOLIDAY (ELECTION DAY)														
Nov. 3 (Rules)	J	K				G	BD		ACIL	E		D	C	E	
Nov. 4 - 5	J	K				G	BD		ACIL	E		D	C	E	
Nov. 8 (Rules)	A		L			C	J		BDEGK	FI		J	G	F	
Nov. 9 - 10	A		L			C	J		BDEGK	FI		J	G	F	
Nov. 11	THURSDAY HOLIDAY (VETERANS' DAY)														
Nov. 12	A		L			C	J		BDEGK	FI		J	G	F	
Nov. 15 (Rules)	F	DE	I	n/a	D		KL		C	AG		L	D	A	
Nov. 16 - 19	F	DE	I	n/a	D		KL		C	AG		L	D	A	
Nov. 22 (Rules)							F		EGI	BDJ		F	E	B	
Nov. 23 - 24							F		EGI	BDJ		F	E	B	
Nov. 25 - 26	THANKSGIVING HOLIDAY														
Nov. 29 (Rules)	J	BK				G	C		AD	FL		C	A	L	
Nov. 30 - Dec. 3	J	BK				G	C		AD	FL		C	A	L	
Dec. 6 (Rules)		E	L	B	E		AI		DFGJ	CK		I	E	M	
Dec. 7 - 10		E	L	B	E		AI		DFGJ	CK		I	E	M	
Dec. 13 (Rules)	F	D	I			C	G		ABJKL	E		G	L	C	
Dec. 14 - 17	F	D	I			C	G		ABJKL	E		G	L	C	
Dec. 20 - 24	CHRISTMAS HOLIDAYS														
Dec. 27 - 31	NEW YEAR'S HOLIDAYS														

**Appendix G:**  
**15th Judicial District Indigent Defender**  
**Board, 2008 FY Budget**

<b>15th Judicial District</b>		
<b>Indigent Defenders Board</b>		
<b>2008 FY Budget</b>		
<b>Revenue</b>		
Partially Indigent Fees		260,000.00
Application Fees		100,000.00
Court Cost		1,179,200.00
Bond Forfeitures		375,000.00
Interest earned		45,000.00
<b>Total Revenue</b>		<b>\$1,959,200.00</b>
<b>Expenditures</b>		
Salaries		230,000.00
Payroll Taxes		19,000.00
Liability/Prop/Auto/Dishonesty		2,950.00
Workmen's Comp		11,000.00
Group Health		30,000.00
Retainers		2,440,500.00
Dues		12,000.00
Rent		21,000.00
Building repair/main.		700.00
Telephone/Utilities		14,000.00
Postage		4,000.00
Office Expense		20,500.00
Capital Outlay		10,000.00
Software		1,000.00
Equip/Computer Maintenance		7,500.00
Medical Experts		25,000.00
Investigation		71,000.00
Other Experts		25,000.00
Misc. Defense Cost		4,500.00
Accounting/Auditing		13,000.00
Bank Charges		900.00
<b>TOTAL EXPENDITURES</b>		<b>\$2,963,550.00</b>
<b>EXCESS OF REVENUE (Deficiency)</b>		<b>-1,004,350.00</b>
<b>OVER EXPENDITURES</b>		
<b>2007 Revenue Breakdown</b>		
<b>Partially Indigent Fees</b>		
Acadia		33,800.00
Lafayette		197,600.00
Vermilion		28,600.00
		<b>\$260,000.00</b>
<b>Application Fees</b>		
Acadia		9,000.00
Lafayette		77,000.00
Vermilion		14,000.00
		<b>\$100,000.00</b>
<b>Court Cost</b>		
Acadia District Court		100,000.00
Crowley City		40,000.00
Rayne City		43,000.00

	Lafayette District	240,000.00
	Lafayette City	625,000.00
	Abbeville City	30,000.00
	Brath City	6,200.00
	Kaplan City	20,000.00
	Vermilion District	75,000.00
		<b>\$1,179,200.00</b>
<b>Bail Reform Act</b>		
	Acadia	27,500.00
	Lafayette	205,500.00
	Vermilion	48,500.00
		<b>\$281,500.00</b>
<b>Interest Income</b>		<b>\$45,000.00</b>
	<b>TOTAL REVENUE</b>	<b>\$1,865,700.00</b>
<b>2007 Expenditures Breakdown</b>		
<b>Salaries</b>	Admin/Paralegal	52,500.00
	Lafayette	28,800.00
	Lafayette	24,800.00
	Lafayette	26,800.00
	Lafayette	22,500.00
	Acadia	28,300.00
	Acadia	10,000.00
	Vermilion	26,300.00
	Vermilion	10,000.00
		<b>\$230,000.00</b>
<b>Payroll Taxes</b>	Acadia	4,200.00
	Lafayette	19,500.00
	Vermilion	4,200.00
		<b>\$19,000.00</b>
<b>Liability/Property/Auto/Dishoncsty</b>		<b>\$2,950.00</b>
<b>Workman Comp</b>		<b>\$11,000.00</b>
<b>Group Health</b>	Acadia	4,100.00
	Lafayette	21,800.00
	Vermilion	4,100.00
		<b>\$30,000.00</b>
<b>Legal Retainers</b>	Acadia	450,500.00
	Lafayette	1,506,000.00
	Vermilion	484,000.00
		<b>\$2,440,500.00</b>
<b>Dues/Seminars</b>	Acadia	2,100.00
	Lafayette	7,200.00
	Vermilion	2,700.00
		<b>\$12,000.00</b>
<b>Rent</b>	Acadia	6,000.00
	Lafayette	15,000.00
		<b>\$21,000.00</b>

<b>Building repair &amp; maint.</b>	Acadia	150.00
	Lafayette	400.00
	Vermilion	150.00
		<b>\$700.00</b>
<b>Telephone/Utilities</b>	Acadia	3,600.00
	Lafayette	6,800.00
	Vermilion	3,600.00
		<b>\$14,000.00</b>
<b>Postage</b>	Acadia	550.00
	Lafayette	2,450.00
	Vermilion	1,000.00
		<b>\$4,000.00</b>
<b>Office Expense</b>	Acadia	2,000.00
	Lafayette	14,000.00
	Vermilion	4,500.00
		<b>\$20,500.00</b>
<b>Capital Outlay</b>	Acadia	2,500.00
	Lafayette	5,000.00
	Vermilion	2,500.00
		<b>\$10,000.00</b>
<b>Software</b>		<b>\$1,000.00</b>
<b>Equipment Main./Repair</b>		<b>\$7,500.00</b>
<b>Medical Experts</b>	Acadia	3,000.00
	Lafayette	15,000.00
	Vermilion	7,000.00
		<b>\$25,000.00</b>
<b>Investigation</b>	Juvenile	33,500.00
	Felony/Misd	37,500.00
		<b>\$71,000.00</b>
<b>Other Experts</b>	Acadia	3,000.00
	Lafayette	15,000.00
	Vermilion	7,000.00
		<b>\$25,000.00</b>
<b>Misc. Defense Cost</b>	(video, copies, etc.)	<b>\$4,500.00</b>
<b>Accounting&amp;Auditing</b>		<b>\$13,000.00</b>
<b>Bank Charges</b>		<b>\$900.00</b>
<b>TOTAL EXPENDITURES</b>		<b>\$2,963,550.00</b>

Staff	Salary	Medical Ins.	H.S.A.
Administrator	\$52,500.00	\$224.89	\$115.00
Sec 1 Laf	\$28,800.00	\$224.89	\$115.00
Sec 2 Laf	\$26,800.00	\$224.89	\$115.00
Sec 3 Laf	\$24,800.00	\$224.89	\$115.00
Sec 4 Laf	\$22,500.00	\$224.89	\$115.00
Sec 5 Acadia	\$28,300.00	\$224.89	\$115.00
Sec 5 Acadia	\$10,000.00	\$224.89	
Sec 6 Verm	\$26,800.00	\$224.89	\$115.00
Sec 6 Verm	\$10,000.00	\$224.89	
Total	\$230,500.00	\$2,024.01	\$805.00

**Appendix H:**  
**15th Judicial District Indigent Defender**  
**Board, Statement of Revenues and**  
**Expenditures, December 31, 2008**



15TH JUDICIAL DISTRICT INDIGENT DEFENDER BOARD  
Excess revenue (Expenditures)  
STATEMENT OF REVENUES AND EXPENDITURES-CASH BASIS  
FOR THE ONE MONTH AND TWELVE MONTHS ENDED DECEMBER 31, 2008

	Current		Year to Date	
	Actual	Percent	Actual	Percent
<b>REVENUE</b>				
State Revenue			\$ 744,580.00	25.8
Other Local Revenues	\$ 154,607.62	66.7	1,429,210.35	49.5
Bond Fees and Forfeitures	29,412.51	12.7	329,279.52	11.4
Interest Earned	1,209.49	0.5	30,165.40	1.0
Application Fees	8,966.07	3.9	96,237.18	3.3
Reimbursements/Attorney Fees	37,699.23	16.3	258,591.02	8.9
Miscellaneous			1,500.00	0.1
<b>* TOTAL REVENUE</b>	<b>231,894.92</b>	<b>100.0</b>	<b>2,889,563.47</b>	<b>100.0</b>
<b>EXPENDITURES</b>				
Salaries	235,263.30	101.5	2,757,528.62	95.4
Hospital/Disability ins.	2,526.26	1.1	30,025.77	1.0
Payroll Taxes	1,407.66	0.6	16,290.66	0.6
Worker's Compensation			5,860.00	0.2
Malpractice insurance			210.00	0.0
Auto/Physical Liability			2,109.00	0.1
Audit/accting expense			13,347.75	0.5
Expert Witness			36,695.29	1.3
Investigators	385.36	0.2	3,833.24	0.1
Capital Representation			887.81	0.0
Building Lease/Rent	1,815.00	0.8	21,780.00	0.8
IT/Technical Support	125.00	0.1	9,444.60	0.3
Major Acquisitions			5,980.20	0.2
Equipment Lease/Rent			2,140.00	0.1
Phone/Util/Postage/Intern	958.20	0.4	14,432.30	0.5
Office Supplies	928.26	0.4	24,086.72	0.8
Travel/Lodging/Mileage/Di	371.38	0.2	371.38	0.0
Dues & Seminars	400.00	0.2	7,135.00	0.2
Law Library/Journals/Sub-			10,064.00	0.3
scription			160.00	0.0
Other Operating Expenses			163.58	0.0
Miscellaneous				
<b>* TOTAL EXPENDITURES</b>	<b>244,180.42</b>	<b>105.3</b>	<b>2,962,545.92</b>	<b>102.5</b>
<b>* EXCESS OF REV. OVER EXP.</b>	<b>\$ (12,285.50)</b>	<b>(5.3)</b>	<b>\$ (72,982.45)</b>	<b>(2.5)</b>

SEE ACCOUNTANTS' COMPILATION REPORT



**Appendix I:**  
***Memorandum*, regarding Retainer Contracts,**  
**September 14, 2009**

**FIFTEENTH JUDICIAL DISTRICT  
PUBLIC DEFENDER OFFICE**

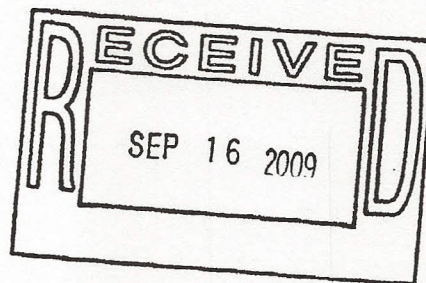
LAFAYETTE PARISH  
321 W. Main St. - Suite 1-C  
P. O. Box 3622  
LAFAYETTE, LOUISIANA 70501

PHONE (337) 232-9345

**MEMORANDUM**

September 14, 2009

**TO: ALL IDO ATTORNEYS**  
**FROM: DAVID K. BALFOUR**  
**RE: RETAINER CONTRACTS**



I have good news and bad news.

First the good news. As of September 1, I will be able to re-instate everyone's 2008 contract amount, with the exception of First-Degree retainers. However, this increased monthly amount will cover a 10-month period (September, 2009 - June, 2010). I will not be able to go back and reimburse everyone for July and August, 2009. The attached contract amount is based on a 10-month period, not a 12-month period. The 2010 contracts and subsequent annual contracts will be for a 12-month period. Beginning July 1, 2010, I hope to increase the contract amounts. We are now on a fiscal calendar with the State.

I was not able to increase the First-Degree retainers to the 2008 amount. You will note however, that I increased the retainer amount by 50%. After a First-Degree case is assigned, a First-Degree attorney will receive an additional monthly amount over and above the retainer. It is no longer necessary to write time for First-Degree assignments.

Now the bad news.

Baton Rouge is requiring that all attorneys write time for all IDO work. Time is to be recorded in increments of 1/10 hour, 1/10 equaling six minutes. Please round up or down appropriately. Also, I ask that everyone try to record your time accurately. This is not insurance defense work. The time you record will not translate into more income. These time records must be provided by to Chris St. Julien by the 5<sup>th</sup> of each month. Finally, only lawyer time is to be recorded, not staff time.

cc: Chris St. Julien

15<sup>th</sup> Judicial District  
**PUBLIC DEFENDERS OFFICE**  
Post Office Box 3622  
321 W. Main Street, Suite 1C  
Lafayette, Louisiana 70502  
(337) 232-9345

September 15, 2009

Please be advised Contracts should be returned to the  
above address no later than **September 30, 2009.**

**ACADIA - LAFAYETTE - VERMILION**

## **Appendix J:**

### **Contract Bases 2007**

[illegible]

	Felony	D Misd.	D Traffic	D Juv	NS	P Ind.	DC	Invc/revo	Laf	Crowley	Rayne	Abb	Kaplan	Admin	Serofity	Capital	Total
<b>Acadia</b>																	
Nichel	48000													1500	7500	24000	81,000.00
Doga	48000														7000	24000	79,000.00
Lejeune	48000													2500		24000	74,500.00
Stefanski	48000									7000					5000		67,000.00
Harrington		7000		7000	8000			9000							42,500.00		65,500.00
Howie			14000	14000		6000				19000	7000				5500		65,500.00
Landy, M.										7000	24000				2500		33,500.00
Landy, J.											7000				500		7,500.00
														Acadia Total			450,500.00
<b>Vermillion</b>																	
Felony		D Misd.	D Traffic	D Juv	NS	P Ind.	DC	Invc/revo	Laf	Crowley	Rayne	Abb	Kaplan	Admin	Serofity	Capital	Total
Melebeck	48000													1500	10000		59,500.00
Thomas	48000														10000	24000	82,000.00
Garrct	48000													1000		24000	
Veasey	48000																58,000.00
Rowe	48000														6000		54,000.00
Broussard		14000	14000	14000								7000			3000		62,000.00
Gidley		14000		7000								19000	7000		1000		48,000.00
Nixon				7000	8000	8000						7000			1000		38,000.00
Dutton													19000		800		19,500.00
													Vermilion Total				484,000.00
													Grand Total				2,440,500.00

**Appendix K:**

***Memorandum*, to APSO Arrestee re Public  
Defender/Attorney, and  
Public Defenders Office Information Sheet**

Glenn Howie  
785-8500

15th Judicial District  
PUBLIC DEFENDERS OFFICE  
521 S.W. Court Circle -P.O. Box 252  
Crowley, LA 70526  
(337) 788-3635

NEXT BOND REDUCTION

9-30-09

Memo to: APSO Arrestee  
Re: PUBLIC DEFENDER/ATTORNEY

This memo is to advise you, an attorney with the Pre-Indictment Division will be representing you While you are IN JAIL and a BILL OF INFORMATION has NOT BEEN FILED by the District Attorney's Office.

You will be put on the next available Bond Reduction Docket, which are usually held on Wednesdays. BOND REDUCTIONS ARE NOT HELD EVERY WEDNESDAY.

Bond reductions will NOT be filed on your behalf if you have ANY of the following;

- a. Probation or Parole Hold
- b. Hold from another Parish or State
- c. Warrants for Failure to Appear
- d. If you are Currently Serving Time on any Other Charges
- e. If you are charged with Misdemeanors in City Court and Your Bonds Are Set at the Minimum Amount

**\*YOU ARE ONLY ENTITLED TO ONE BOND REDUCTION WITH THE PRE-INDICTMENT ATTORNEY, SO READ CAREFULLY\***

In order to have a Hearing in from of Judge Frederick, you must have witnesses. If you do not have any witnesses present on the day of your bond reduction you will not have a Hearing. Therefore, you must call your family, friends, neighbors, co-workers and employers and ask them to ATTEND your Bond Reduction Hearing to testify on your behalf. If you have witnesses to testify on your behalf that is no guarantee that your bond will be reduced.

**\*The Public Defender's Office CAN NOT POST YOUR BOND\***

The Attorney will attempt to reduce your bond and take whatever steps are available on your behalf. The Judge will hold a Bond Hearing **"ONE TIME"!**

The District Attorney assigned to your case has **45 DAYS for MISDEMEANORS and 60 DAYS for FELONIES** from the date you are arrested to file formal charges, or present the matter to a Grand Jury.

When an INDICTMENT or BILL OF INFORMATION is filed by the District Attorney, YOU HAVE BEEN FORMALLY CHARGED, and an Arraignment date will be set and a subpoena will be sent to you.



A Writ of Habeas Corpus can be filed after the 45<sup>th</sup> day on Misdemeanors and the 60<sup>th</sup> day on Felonies so you will need to contact the Public Defender's Office at 788-3635. If a Bill of Information is filed before you Hearing, your Writ will be **DENIED, NOW!** If your Writ is Granted, remember the District Attorney's Office can still formally charge you, after you release!!

If you are formally charged and in jail, the Pre-Indictment Attorney will represent you at arraignment. Your Trial Attorney will begin representing you after arraignment. Your Trial Attorney can file for more Bond Reductions upon your request.

You should discuss your case with your **TRIAL ATTORNEY ONLY!!!**

Your Trial Attorney will represent you during Pre-Trial and Trial proceedings and will assist you in the event the District Attorney offers you a Plea Bargain. **YOU MUST CONTACT YOUR ATTORNEY FOR AN APPOINTMENT OR PHONE CONFERENCE.**

If you have any questions, contact the Public Defenders Office at: 788-3635

# Public Defenders Office Information Sheet

## **Read This Sheet Completely Before You Contact This Office**

You have been arrested on the following charges:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

Your total bond is \$\_\_\_\_\_.

### **BOND REDUCTIONS**

You are automatically placed on the bond reduction docket if you have no detainers or holds.

Bond reductions are normally taken up on Mondays unless there are no felony tracts that week. Dates and times are subject to change according to the court's discretion.

No bond reductions will be taken up on the following Mondays: August 3<sup>rd</sup>, August 31<sup>st</sup>, September 7<sup>th</sup>, November 23<sup>rd</sup>, December 21<sup>st</sup>, and December 28<sup>th</sup>.

If you went to 72 hour court on a Monday, Tuesday or Wednesday you will be placed on the bond reduction docket for the following Monday. If you went to 72 hour court on a Thursday or Friday, you will be placed on the bond reduction docket held on the 2<sup>nd</sup> Monday after you went to 72 hour court.

Mr. Scott Privat has been assigned to represent you at this time. He can be reached at 984-8180. He will meet with the District Attorney to discuss lowering your bond on Monday morning at 8:00 a.m. Depending on the charge and your record, the DA may stipulate to a reduction. However, if no stipulation can be reached, a bond review hearing will be necessary. It is not advised that you testify on your own behalf at the bond review hearing because anything you say can be used against you at your trial. Therefore, you may contact a relative (mother, father, brother, sister, etc.) or a friend to come and testify on your behalf. They need to meet the public defender at 8:00 a.m. on the Monday of your bond review hearing at the jail. They will be given a form to fill out and they will be asked basic questions whether you work, have a place to live, what type of bond can you afford, etc. If no person can testify for you, the public defender will address the court and submit your file to the judge. The judge will then make a decision on your bond.

**If No Bill of Information is filed** against you in 45 days for a misdemeanor or 60 days on a felony a motion will be filed to ask the Judge to release you without bond because there are no formal charges filed against you. If the Motion is granted you will be released, you may receive a subpoena to appear in court for these charges.

**If a Bill of Information is filed** a Trial Attorney will be assigned to you. You will receive a Notice of Appointment which has the Attorney's name, address and phone number. Your attorney will get discovery from the District Attorney and provide you with a copy. This process takes approximately 30 to 60 days from the date charges are filed against you.

**If you are transferred from LPCC** or move from the address you gave on your application, you must give your attorney your new address in order for him/her to remain in contact with you.

**If you are released or bond out of jail**, you must complete an application with this office and qualify in order for an attorney to be assigned to represent you. This application can be done after you have received a subpoena for court.

Post Office Box 3622 - 321 W. Main Street, Ste 1C, Lafayette, Lafayette 70502  
Toll Free from LPCC 232-8168

**Appendix L:**  
**Instructions used by IDO Staff to**  
**determine eligibility, assess**  
**recoupment, and appoint counsel**

**FELONY** RONALD MELEBECK, LINDA VEAZEY, LOUIS GARROT,  
PATRICIA THOMAS, JAN ROWE, GABE DUHON, BURTON  
GUIDRY

**MISDEMEANOR** NICOLE GUIDRY, BART BROUSSARD

**TRAFFIC** BART BROUSSARD

**DISTRICT JUV.**

DELIQUENTS, OCS CHILDREN- BART BROUSSARD  
OCS 1<sup>ST</sup> PARENT(S)- NICOLE GUIDRY  
OCS 2<sup>ND</sup> PARENT(S)- JOANN NIXON  
(Can Represent all  
fathers)

**ABBEVILLE CITY**

DELIQUENTS, OCS CHILDREN- NICOLE GUIDRY  
OCS 1<sup>ST</sup> PARENT(S)- JULIE ROSENZWEIG  
OCS 2<sup>ND</sup> PARENT(S)- JOANN NIXON

**KAPLAN CITY**

*Nicole - FINS*  
*Sub. & Improper Sup. of minor*  
DELIQUENTS, OCS CHILDREN- JULIE ROSENZWEIG  
OCS 1<sup>ST</sup> PARENT(S)- NICOLE GUIDRY  
OCS 2<sup>ND</sup> PARENT(S)- JOANN NIXON

*Can rep. both FINS & Improper Sup. of minor*  
**\$40 APPLICATION FEE (EXCLUDES INMATES ONLY)**

**SINGLE HOUSEHOLD MAXIMUM MONTHLY INCOME \$1800**  
**FAMILY HOUSEHOLD MAXIMUM MONTHLY INCOME \$3300**

<b>\$\$ REMAINING AFTER EXPENSES</b>	<b>FELONY</b>	<b>MISDEMEANOR</b>
\$0-349	\$350	\$200
\$350-450	\$400	\$250
\$451-550	\$450	\$300
\$551-650	\$500	\$350
\$651-750	\$550	\$400
\$751-800	\$600	\$450
\$800-above	DENIED	DENIED

**\*DO NOT CHARGE PI FEE FOR JUV. OR CITY COURT (APP FEE ONLY)**

**\*TRAFFIC- IF THEY APPLY THAT DAY AND PLEAD THAT DAY- \$190**

**\*NONSUPPORT-RULE TO SET SUPPORT-ONLY CHARGE \$40 APP. FEE**  
**MOTION TO REDUCE CHILD SUPPORT- CHARGE APP AND PI FEE**

15<sup>th</sup> Judicial District  
**PUBLIC DEFENDERS OFFICE**  
Post Office Box 3622  
321 W. Main Street, Suite 1C  
Lafayette, Louisiana 70502  
(337) 232-9345

March 3, 2008

To: IDO Staff  
From: Chris

RE: PI fee increases

Below is a new income/fee scale which is effective today. Please let me know if you have any questions.

Thanks,  
Chris

Single household maximum monthly income \$1800  
Family household maximum monthly income \$3300

\$\$ Remaining after Expenses	Felony	Misd.
\$0-349	\$350	\$200
\$350-450	\$400	\$250
\$451-550	\$450	\$300
\$551-650	\$500	\$350
\$651-750	\$550	\$400
\$750-800	\$600	\$450
\$801-above	DENIED	DENIED

**Appendix M:**  
***Defendant Information Sheet, and***  
***\$40.00 Application Fee Notice***

15<sup>th</sup> Judicial District  
**Public Defenders Office**  
321 W. Main Street, Suite 1C  
Lafayette, LA 70501  
(337) 232-9345

## Defendant Information Sheet

You have just completed an application to determine if you qualify for the appointment of an Attorney through the Public Defenders Office.

If you have not paid your \$40 application fee, it must be paid by the due date on the green notice you have been given. Your application may not be processed if your fee is not paid timely. You can mail a money order to Post Office Box 3622, Lafayette La. 70502 or you can hand deliver your payment to the above address.

Your application will be processed within the next 10 to 15 business days. If you qualify for an Attorney, a Notice of Appointment indicating the Attorney's name, address and phone number, will be mailed to you at the address you've given. If you are assessed a fee for representation you will receive that information along with the Notice of Appointment.

Once the attorney receives the file, they will mail you correspondence regarding your case. *It is your responsibility to contact the attorney to discuss your case before your next court date.*

If you have any witnesses, you will need to give the attorney their names, addresses and telephone numbers.

### **Misdemeanors**

Misdemeanors are crimes punishable by a fine of a few hundred dollars and/or jail time of up to six months. Misdemeanors are set on a Trial docket only. All motion and preliminary matters will be taken up on the same day.

### **Felonies**

Felony crimes are punishable by jail time, probation and/or a fine. Jail time can be parish jail or state time (referred to as "Hard Labor"). Felony cases are set for two court dates, a Pre-Trial and a Trial date.

At the Pre-Trial date your Attorney will attempt to negotiate a plea bargain with the District Attorney. If you agree to plea, you will be sentenced that day and it will not be necessary for you to appear at the trial date on your subpoena. If you decide not to accept the plea bargain your case will go to trial and you will need to appear on the Trial date listed on the subpoena you received at your arraignment.

### **Plea Bargains**

In this District, most cases are disposed of by "Plea Bargain". In which you and the District Attorney agreed to a charge and sentence. You should consider your attorney's advice in regards to the Plea Bargain. The District Attorney may not always be willing to negotiate your sentence and may want to "Go To Trial" and let the Judge or Jury decide the case. Also be advised that the Judge always makes the final decision on a defendant's sentence, not your attorney or the District Attorney. However, if a agreement is reached between you and the D.A. the Judge will usually follow that agreement.

### **Subpoena**

You were personally served with your subpoena when you appeared before the Judge at your arraignment. (It's pink) You will not be served again for this case.

## **\$40.00 APPLICATION FEE NOTICE**

You are hereby ordered to pay \$40.00 to the Public Defenders Office on or before \_\_\_\_\_.

Any questions call LINDSEY (MISS)  
KIM (FELONY) @ 337-232-9345.

Docket/Case #: \_\_\_\_\_, must be on your MONEY ORDER or with your Cash.

Money Orders are Payable to: **PUBLIC DEFENDERS OFFICE**

Mail To: P.O. Box 3622, Lafayette, LA. 70502

Hand Delivery: 321 West Main St., Ste 1-C, Lafayette, LA.

*(Located in the LEGAL CENTER next to ACE BONDING)*

**\*\*\*\*\*NO CHECKS, CREDIT OR DEBIT CARDS ACCEPTED\*\*\*\*\***



**Appendix N:**  
**Sample letter to client with Notice of**  
**Appointment, and**  
***Notice of Appointment* form**

15<sup>th</sup> Judicial District  
**PUBLIC DEFENDERS OFFICE**

Post Office Box 3622  
321 W. Main Street, Suite 1C  
Lafayette, Louisiana 70502  
(337) 232-9345

September 1, 2009

[REDACTED]  
[REDACTED]  
Youngsville, LA 705292

RE: State of Louisiana Vs. [REDACTED]  
Docket No.: 124947

Dear Defendant:

Please find attached a copy of the Notice of Appointment which list the attorney appointed to represent you.

After review of the information you provided on your application and the fact that you are not in jail, it has been determined that you are partially indigent. Therefore, it is necessary that you assist in your defense cost. You have been assessed a fee in the amount of \$350 for your representation. Payments should be made to the **Public Defenders Office** on a monthly basis until your fees are paid in full.

We accept Cash or Money Orders Only. **Payments can be hand delivered to 321 W. Main Street, Suite 1C, or mailed to Post Office Box 3622, Lafayette, Louisiana 70502.** Money orders should be made payable to the Public Defenders Office. Your name and docket number should also be listed on your money order.

Should you have any questions, please feel free to contact us.

Best Regards,

David Balfour  
Chief Public Defender

Enclosure  
cc: File  
Clerk of Court

**ACADIA - LAFAYETTE - VERMILION**

Versus

Lafayette Parish

[REDACTED]

Case No: 119279

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**Certification of Indigence  
And  
Notice of Appointment of Counsel**

As provided by La. R.S. 15:147 and La. R.S. 15:148, the 15th Judicial District Court ordered the above Defendant to be interviewed by the Public Defender Office for a determination of indigence.

The 15th Judicial District Public Defender, through the District Public Defender, has determined the above Defendant is indigent and has made the following appointment of counsel.

**Chris Richard, Attorney at Law**  
730 Jefferson Street, Lafayette, LA 70501  
234-5505

The charge(s) against the defendant is/are

14:63	Criminal Trespass
14:108	Resisting an Officer

By copy of this filing, your client, the Clerk of Court and the District Attorney are so advised and informed of your appointment.

By: \_\_\_\_\_  
District Public Defender  
Signed: March 18, 2010

**Appendix O:**  
***Attorney Conflict Form, and***  
***Notice of Reassignment of Counsel***

# ATTORNEY CONFLICT FORM

September 3, 2009

**Attorney Name:** \_\_\_\_\_

**Defendant Name:** \_\_\_\_\_

**Co-Defendant(s):** \_\_\_\_\_

**Victim(s):** \_\_\_\_\_

**ADA:** \_\_\_\_\_ **Track:** \_\_\_\_\_

**Case/Docket #:** \_\_\_\_\_

**Please list conflict(s):** \_\_\_\_\_

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Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Date: \_\_\_\_\_

Public Defender's Office

State of Louisiana

9-23-09  
Abbeville City Court

Versus

Vermilion Parish

██████████

Case No: C-93153

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**Notice of Reassignment of Appointment of Counsel**

The appointment of Nicole Guidry by the 15th Judicial District Indigent Defender Board in the above captioned matter has been revoked and the following appointment of counsel has been made.

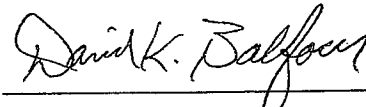
**Julie Rosenzweig, Attorney at Law**  
300 N. Louisiana Street, Abbeville, LA 70510  
422-6253

The charge(s) against the defendant is/are

14:67.B.3          Misdemeanor Theft - Less than \$300

The Defendant, the above Attorneys and the District Attorney's Office are hereby advised of the change in counsel through a copy of this filing.

By:



Chief Public Defender  
Signed: July 22, 2009

**Appendix P:**  
***Application for Public Defender***

Office Use Only

Dk # \_\_\_\_\_ OCS 72: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_  
Chg: \_\_\_\_\_

Dk # \_\_\_\_\_ Dist/City \_\_\_\_\_ T \_\_\_\_\_ Arr: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_  
Chg: \_\_\_\_\_

Assigned Open Cases: Atty \_\_\_\_\_ Track \_\_\_\_\_ Dk \_\_\_\_\_ REC #: \_\_\_\_\_ C/M \_\_\_\_\_

App Fee: Paid\$ \_\_\_\_\_ Date Pd \_\_\_\_\_ Bal: \$ \_\_\_\_\_ Due Date \_\_\_\_\_ PI Fee: 150, 250, \$ \_\_\_\_\_

APPLICATION FOR PUBLIC DEFENDER

Applicant hereby affirms under penalty or perjury that he or she desires counsel but is financially unable to procure those services and the following information concerning his or her financial means and obligations is true and correct to the best of his or her knowledge. Applicant also agrees to report in writing any change in his or her address or financial status to Public Defender's Office

Parent's Name: \_\_\_\_\_ aka/Madien \_\_\_\_\_

Address: \_\_\_\_\_ Lot/Apt \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

DOB: \_\_\_\_\_ Sex: \_\_\_\_\_ Race: \_\_\_\_\_ SS# \_\_\_\_\_

Child Name \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Child Name \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Child Name \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Child Name \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Martial Status: Circle one Single Married Separated Divorced Widow

How many children do you have under 18: \_\_\_\_\_ How many of these child(ren) live with you? \_\_\_\_\_

How many people/children do you support in your household? \_\_\_\_\_

Attending School? YES/NO Name of School: \_\_\_\_\_

Do you have a job? YES/NO If NO; last day you worked. \_\_\_\_\_

If YES who do you work for: \_\_\_\_\_

How often do you get paid: weekly, biweekly, semi-monthly or month

On average how much is your check when you receive it? \$ \_\_\_\_\_

Does your spouse have a job? YES NO If NO; what was the last day worked. \_\_\_\_\_

If YES who do they work for: \_\_\_\_\_

How often do they get paid: weekly, biweekly, semi-monthly or month

On average how much is their check when they receive it? \$ \_\_\_\_\_

The dollar amount you, your spouse & child(ren) RECEIVES:

Food Stamps \$ \_\_\_\_\_ Welfare \$ \_\_\_\_\_ SSI \$ \_\_\_\_\_

Unemployment \$ \_\_\_\_\_ Retirement \$ \_\_\_\_\_ Workers Comp \$ \_\_\_\_\_

Child Support \$ \_\_\_\_\_ Disability \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

List property you or your spouse are buying or own: Car, Truck, Boat, Motorcycle, House or Land

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Approximate value of Home or Land \$ \_\_\_\_\_

The dollar amount YOU PAY:

Rent/House Note \$ \_\_\_\_\_ Lot Rent \$ \_\_\_\_\_ Utility Bill \$ \_\_\_\_\_

Water \$ \_\_\_\_\_ Phone \$ \_\_\_\_\_ Gas (home) \$ \_\_\_\_\_

Cable \$ \_\_\_\_\_ Car Note \$ \_\_\_\_\_ Car Ins. \$ \_\_\_\_\_

Gas (vehicle) \$ \_\_\_\_\_ Cab/Bus Fair \$ \_\_\_\_\_ Rx expense \$ \_\_\_\_\_

Life/Med Ins. \$ \_\_\_\_\_ House Ins. \$ \_\_\_\_\_ Medical Bills \$ \_\_\_\_\_

Child Care \$ \_\_\_\_\_ School Lunch \$ \_\_\_\_\_ Work Lunch \$ \_\_\_\_\_

Groceries, Toiletries, Cleaning and Baby Supplies \$ \_\_\_\_\_ Credit Cards \$ \_\_\_\_\_

Probation Fees \$ \_\_\_\_\_ Fines/Loans \$ \_\_\_\_\_ Bondman \$ \_\_\_\_\_

Child Support \$ \_\_\_\_\_ Rent to Own \$ \_\_\_\_\_ Other \$ \_\_\_\_\_

If you are unemployed and/or do not have any expenses, who do you live with? \_\_\_\_\_

Signature (sign your name) \_\_\_\_\_

Date of Application \_\_\_\_\_



Dk # \_\_\_\_\_ Dist/City \_\_\_\_\_ T \_\_\_\_\_ Arr: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_  
Chg: \_\_\_\_\_

Dk # \_\_\_\_\_ Dist/City \_\_\_\_\_ T \_\_\_\_\_ Arr: \_\_\_\_\_ PT: \_\_\_\_\_ T: \_\_\_\_\_  
Chg: \_\_\_\_\_

Open Cases: Atty \_\_\_\_\_ T \_\_\_\_\_ Dk \_\_\_\_\_ Open Cases: Atty \_\_\_\_\_ T \_\_\_\_\_ Dk \_\_\_\_\_

App Fee: Paid\$ \_\_\_\_\_ Date \_\_\_\_\_ Receipt# \_\_\_\_\_  
Balance Due \$ \_\_\_\_\_ Due Date \_\_\_\_\_ PI Fee: 150, 250, \$ \_\_\_\_\_

APPLICATION FOR PUBLIC DEFENDER

Applicant hereby affirms under penalty or perjury that he or she desires counsel but is financially unable to procure those services and the following information concerning his or her financial means and obligations is true and correct to the best of his or her knowledge. Applicant also agrees to report in writing any change in his or her address or financial status to Public Defender's Office

Start▶ Name: \_\_\_\_\_ aka/Madien \_\_\_\_\_

Address: \_\_\_\_\_ Lot/Apt \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

DOB: \_\_\_\_\_ Sex: \_\_\_\_\_ Race: \_\_\_\_\_ SS# \_\_\_\_\_

Martial Status: Circle one    Single   Married   Separated   Divorced   Widow

How many children do you have under 18: \_\_\_\_\_ How many of these child(ren) live with you? \_\_\_\_\_

How many people/children do you support in your household? \_\_\_\_\_

Attending School? YES/NO    Name of School: \_\_\_\_\_

Do you have a job?   YES/NO        If NO; last day you worked. \_\_\_\_\_

If YES who do you work for: \_\_\_\_\_

How often do you get paid:   weekly, biweekly, semi-monthly or month

On average how much is your check when you receive it? \$ \_\_\_\_\_

Does your spouse have a job?   YES    NO        If NO; what was the last day worked. \_\_\_\_\_

If YES who do they work for: \_\_\_\_\_

How often do they get paid:   weekly, biweekly, semi-monthly or month

On average how much is their check when they receive it? \$ \_\_\_\_\_

The dollar amount you, your spouse & child(ren) RECEIVES:

Food Stamps	\$ _____	Welfare	\$ _____	SSI	\$ _____
Unemployment	\$ _____	Retirement	\$ _____	Workers Comp	\$ _____
Child Support	\$ _____	Disability	\$ _____	Other	\$ _____

List property you or your spouse are buying or own: Car, Truck, Boat, Motorcycle, House or Land

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Year and Model of Vehicle \_\_\_\_\_ Approximate value\$ \_\_\_\_\_

Approximate value of Home or Land \$ \_\_\_\_\_

The dollar amount YOU PAY:

Rent/House Note	\$ _____	Lot Rent	\$ _____	Utility Bill	\$ _____
Water	\$ _____	Phone	\$ _____	Gas (home)	\$ _____
Cable	\$ _____	Car Note	\$ _____	Car Ins.	\$ _____
Gas (vehicle)	\$ _____	Cab/Bus Fair	\$ _____	Rx expense	\$ _____
Life/Med Ins.	\$ _____	House Ins.	\$ _____	Medical Bills	\$ _____
Child Care	\$ _____	School Lunch	\$ _____	Work Lunch	\$ _____
Groceries, Toiletries, Cleaning and Baby Supplies	\$ _____			Credit Cards	\$ _____
Probation Fees	\$ _____	Fines/Loans	\$ _____	Bondman	\$ _____
Child Support	\$ _____	Rent to Own	\$ _____	Other	\$ _____

If you are unemployed and/or do not have any expenses, who do you live with? \_\_\_\_\_

Defendant Signature (sign your name) \_\_\_\_\_

Date of Application \_\_\_\_\_

**Appendix Q:**  
***Public Defender District 15, Cases***  
***Received by Attorney, FY: 2008-2009***

## Public Defender District 15

\*2008

Cases Received By Attorney FY: 2008 - 2009

Attorney	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Amos, Valex	7	12	7	13	16	7	14	11	16	12	8	17	140
Application, Denied	10	7	9	10	9	7	13	4	4	2	7	4	86
Balfour, David	9	9	10	9	7	9	10	11	11	14	7	10	116
Beaner, Christ	33	54	26	59	1	28	6	17	14	33	13	5	289
Block, Gerald	6	11	7	11	10	3	12	12	13	8	6	18	117
Broussard, Bart	44	59	41	70	52	40	45	45	93	41	98	83	711
Cloutier, Monique	36	41	34	38	32	15	52	43	40	55	54	40	480
Dangerfield, Lloyd	104 41	19	18	26	39	36	31	10	42	49	24	28	363
Dixon, Jr., James	8	13	6	12	14	6	10	14	13	12	9	18	135
Doga, Burleigh	19	16	13	14	13	14	6	7	13	14	13	5	147
Duhon, Gabe	37	11	19	26	7	24	11	2	11	1	9	10	168
Dupont, Thomas	0	0	0	0	0	0	0	1	1	10	35	28	75
Edwards, Luke	15	16	13	15	8	8	28	14	9	17	10	17	170
Evans, C. Roan	28	106	34	51	44	32	33	48	26	24	2	0	428
Francis-Jones, Roshell	16	29	9	25	3	21	23	14	8	19	21	6	194
Garrett, Valerie	9	23	13	11	19	5	25	15	9	19	16	14	178
Garrot, Louis	19	17	16	16	4	8	8	8	8	5	11	14	134
Gauthier, Trent	0	0	0	0	1	1	8	0	0	0	0	0	10
Gautreaux, Kay	20	31	24	26	19	13	36	16	29	30	17	27	288
Guidry, Nicole	59	72	30	61	21	43	47	48	60	33	82	59	615
Guidry, Burton	19	15	10	6	8	8	4	11	12	3	8	12	116
Harrington, Thomas	52	47	38	71	51	30	29	38	61	61	29	41	548
Hayes, Kim	8	4	5	15	16	6	14	9	11	14	15	4	121
Howie, Glen	85	40	26	80	22	23	99	64	116	98	100	47	800 vs 695
Jardell, Remy	0	2	3	3	1	3	5	1	1	3	6	9	37
Kennison, Dan	8	18	19	21	22	5	32	9	20	21	20	30	225
Landry, James	3	0	0	0	0	0	4	1	0	2	3	0	13
Landry, Michael	25	7	71	90	34	48	89	44	67	25	44	1	545
Larue, Christopher	9	29	24	27	24	44	70	60	68	44	64	42	505
Lasseigne, Randy	18	10	12	16	9	9	20	10	9	19	13	13	158
LeJeune, Clay	18	13	13	20	11	6	6	9	19	10	8	5	138
McCann, Randal	28	17	11	9	1	8	7	13	3	13	3	8	121
Melebeck, Ronald	6	16	7	17	7	2	5	6	13	1	12	9	101
Merc, Richard	23	29	25	26	20	17	34	15	29	31	16	29	294
Mose, Travis	122 17	16	20	17	7	12	20	12	12	17	15	20	185
Neumann, Vivian	38	26	17	41	36	27	37	16	56	42	47	26	409
Neumann, Eric	14	15	13	10	14	15	12	17	12	22	6	26	176
Nickel, Jack	22	18	13	20	10	5	8	9	11	14	11	5	146
Nixon, JoAnn	39	29	29	28	8	3	5	4	10	7	3	13	178
Piccione, James Kirk	16	17	13	9	12	8	12	15	14	21	5	25	167
Pierre, Tricia	30	23	26	37	19	27	31	18	21	41	29	23	325
Prejean, Allyson	120 163 57	33	30	43	27	27	42	25	53	39	29	32	437 vs 487
Privat, Scott	12	13	4	10	5	7	38	29	34	30	48	35	265
Register, Harold	9	20	13	12	13	6	17	14	10	20	12	14	160
Richard, Chris	26	32	23	28	16	17	19	25	26	30	19	38	299
Robinson, Jennifer	72	85	56	56	35	37	23	15	12	12	3	23	429
Rosenzweig, Julie	8	6	0	3	3	9	52	18	20	34	8	15	176
Rowe, Jan	18	28	7	9	4	5	7	11	12	5	7	17	130
Stefanski, Brett	20	17	9	15	10	5	6	10	19	9	10	1	131
Thomas, Patricia	18	13	12	15	2	4	3	5	7	5	15	16	115 vs 477
Veazey, Linda	20	29	9	15	7	7	7	11	16	5	11	15	152
Williams, Lenise	25	28	24	26	14	19	21	24	29	30	20	37	297

# Public Defender District 15

Cases Received By Attorney FY: 2008 - 2009

<u>Attorney</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Total</u>
	1,179	1,241	911	1,288	787	769	1,196	908	1,223	1,126	1,081	1,034	12,743

**Appendix R:**  
**IDO attorney caseloads, FY 08-09**

LAST	FIRST	PARISH	CASES/TRACK	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL	MISD EQUIV	% NAT'L STND
Doga	Burleigh	Acadia	Fel Capital	19	16	13	14	13	14	6	7	13	14	13	5	147	392	98%
Hayes	Kim	Acadia	Fel Capital	8	4	5	15	16	6	14	9	11	14	15	4	121	323	81%
LeJeune	Clay	Acadia	Fel Capital	18	13	13	20	11	6	6	9	19	10	8	5	138	368	92%
Nickel	Jack	Acadia	Fel Capital Fel Arr Parish Coordinator	22	18	13	20	10	5	8	9	11	14	11	5	146	389	97%
Stefanski	Brett	Acadia	Fel Dist OCS	20	17	9	15	10	5	6	10	19	9	10	1	131	349	87%
Harrington	Rhett	Acadia	Misd, Juv. OCS, Non-Support, Rev	52	47	38	71	51	30	29	38	61	61	29	41	548	548	137%
Howie	Glen	Acadia	Traffic/Juv Delinquency/Pre-Indict Crowley City, Rayne City OCS	85	40	26	80	22	23	99	64	116	98	100	47	800	800	200%
Landry	James	Acadia	Crowley City OCS Rayne City Misd Juv	3	0	0	0	0	0	4	1	0	2	3	0	13	26	7%
Landry	Michael	Acadia	Rayne City OCS	25	7	71	90	34	48	89	44	67	25	44	1	545	545	136%
Balfour	David	Lafayette	Fel	9	9	10	9	7	9	10	11	11	14	7	10	116	309	77%
Edwards	Luke	Lafayette	Fel, T1 Capital	15	16	13	15	8	8	28	14	9	17	10	17	170	453	113%
Lasseigne	Randy	Lafayette	Fel, T1	18	10	12	16	9	9	20	10	9	19	13	13	158	421	105%
Mose	Travis	Lafayette	Fel, T1	17	16	20	17	7	12	20	12	12	17	15	20	185	493	123%
McCann	Randal	Lafayette	Fel, T2 Capital	28	17	11	9	1	8	7	13	3	13	3	8	121	323	81%
Neumann	Eric	Lafayette	Fel, T2 Capital	14	15	13	10	14	15	12	17	12	22	6	26	176	469	117%
Piccione	Kirk	Lafayette	Fel, T2 Capital	16	17	13	9	12	8	12	15	14	21	5	25	167	445	111%
Robinson	Jennifer	Lafayette	Fel, T2	72	85	56	56	35	37	23	15	12	12	3	23	429	1144	286%
Garrett	Valerie	Lafayette	Fel, T3 Capital	9	23	13	11	19	5	25	15	9	19	16	14	178	475	119%
Kennison	Dan	Lafayette	Fel, T3	8	18	19	21	22	5	32	9	20	21	20	30	225	600	150%
Register	Harold	Lafayette	Fel, T3 Capital	9	20	13	12	13	6	17	14	10	20	12	14	160	427	107%
Amos	Valex	Lafayette	Fel, T4 Capital	7	12	7	13	16	7	14	11	16	12	8	17	140	373	93%
Block	Gerald	Lafayette	Fel, T4 Capital	6	11	7	11	10	3	12	12	13	8	6	18	117	312	78%
Dixon	James	Lafayette	Fel, T4 Capital	8	13	6	12	14	6	10	14	13	12	9	18	135	360	90%
Gautreaux	Kay	Lafayette	Misd	20	31	24	26	19	13	36	16	29	30	17	27	288	288	72%
Mere	Richard	Lafayette	Misd	23	29	25	26	20	17	34	15	29	31	16	29	294	294	74%
Richard	Chris	Lafayette	Misd	26	32	23	28	16	17	19	25	26	30	19	38	299	299	75%
Williams	Lenise	Lafayette	Misd	25	28	24	26	14	19	21	24	29	30	20	37	297	297	74%
Dangerfield	Lloyd	Lafayette	Juv	41	19	18	26	39	36	31	10	42	49	24	28	363	726	182%
Neumann	Vivian	Lafayette	Juv	38	26	17	41	36	27	37	16	56	42	47	26	409	818	205%
Prejean	Allyson	Lafayette	Juv Juv Drug Court	57	33	30	43	27	27	42	25	53	39	29	32	437	874	219%
Cloutier	Monique	Lafayette	Non-Support	36	41	34	38	32	15	52	43	40	55	54	40	480	960	240%
Pierre	Tricia	Lafayette	District Court DWI & IWC	30	23	26	37	19	27	31	18	21	41	29	23	325		0%
Privat	Scott	Lafayette	Pre-Indict, Habeas, Rev	12	13	4	10	5	7	38	29	34	30	48	35	265		0%
Gauthier	Trent	Lafayette	Pre-Indict, Habeas, Rev	0	0	0	0	1	1	8	0	0	0	0	0	10		0%
Jardell	Remy	Lafayette	Pre-Indict, Habeas, Rev	0	2	3	3	1	3	5	1	1	3	6	9	37		0%
Larue	Christopher	Lafayette	Fel Rev, Drug Court	9	29	24	27	24	44	70	60	68	44	64	42	505		0%

LAST	FIRST	PARISH	CASES/TRACK	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL	MISD EQUIV	% NAT'L STND
Dupont	Thomas	Lafayette	Lafayette City Juvenile		0	0	0	0	0	0	1	1	10	35	28	75	150	38%
Evans	Roan	Lafayette	Lafayette City Juvenile	28	106	34	51	44	32	33	48	26	24	2	0	428	856	214%
Francis-Jones	Roshell	Lafayette	Lafayette City	16	29	9	25	3	21	23	14	8	19	21	6	194	194	49%
Beaner	Christ	Lafayette	Lafayette City	33	54	26	59	1	28	6	17	14	33	13	5	289	289	72%
Duhon	Gabe	Vermilion	Felony	37	11	19	26	7	24	11	2	11	1	9	10	168	448	112%
Garrot	Louis	Vermilion	Fel Fel Rev Capital	19	17	16	16	4	8	8	8	8	5	11	14	134	357	89%
Guidry	Burton	Vermilion	Fel Capital	19	15	10	6	8	8	4	11	12	3	8	12	116	309	77%
Melebeck	Ronald	Vermilion	Fel Parish Coordinator	6	16	7	17	7	2	5	6	13	1	12	9	101	269	67%
Rowe	Jan	Vermilion	Fel	18	28	7	9	4	5	7	11	12	5	7	17	130	347	87%
Thomas	Patricia	Vermilion	Fel Capital	18	13	12	15	2	4	3	5	7	5	15	16	115	307	77%
Veazey	Linda	Vermilion	Fel Capital	20	29	9	15	7	7	7	11	16	5	11	15	152	405	101%
Broussard	Bart	Vermilion	Misd, Juv, Revocations	44	59	41	70	52	40	45	45	93	41	98	83	711	711	178%
Guidry	Nicole	Vermilion	Misd, Juv, Abbeville City/Kaplan City OCS	59	72	30	61	21	43	47	48	60	33	82	59	615	615	154%
Nixon	JoAnn	Vermilion	Pre-Indict, Dist Non-Support, Dist OCS, Abbeville City/kaplan City OCS	39	29	29	28	8	3	5	4	10	7	3	13	178	356	89%
Rosenzweig	Julie	Vermilion	Kaplan City Misd Kaplan City Juv, Abbeville City OCS conflicts	8	6	0	3	3	9	52	18	20	34	8	15	176	352	88%
Application	Denied			10	7	9	10	9	7	13	4	4	2	7	4	86		

**Appendix S:**  
***Capital Cases 15th JDC***



Capital Cases 15<sup>th</sup> JDC

Eric Smith	open	2007-05-04	116389	14:30 - 1 <sup>st</sup> murder
Aaron Francois	open	2009-03-03	123773	14:30
Kevin Francis	open	2009-04-23	74764	14:30
Kevin Gildhouse	open	2009-03-03	123773	14:30
Ryan Williams	open	2009-04-23	74765	14:42.1 forceable rape
Ove Wilson	open	2009-04-23	74804	14:30
Ryan Williams	open	2009-04-23	74803	14:30
Aaron Leday	open	2009-01-30	74540	14:30
Kevin Francis	open	2009-04-23	74802	14:30
Wilbert Clark	open	2007-08-21	117650	14:30
Kevin Francis	open	2009-04-23	74764	14:30
Daniel Prince	open	2008-05-07	72189-I,II	14:30
Kevin Francis	open	2009-04-23	74802	14:30
Aaron Francois	open	2009-03-03	123773	14:30
Claude Morrison	open	2009-04-24	74763-I,II,III	14:30
Ryan Williams	open	2009-04-23	74765	14:42.1
Ove Wilson	open	2009-04-23	74804	14:30
Kevin Gildhouse	open	2009-03-03	123773	14:30
Nathal Trahan	open	2008-05-02	120612	14:30
Aaron Leday	open	2009-01-23	74540	14:30

**Appendix T:**  
***Instructions for Submitting***  
***Investigator/Expert Request,***  
**Revised 6/15/09**

## Instructions for Submitting Investigator/Expert Request

1. All requests must be submitted directly to **District Defender David Balfour** either by **fax at 234-2454** or by **mail, Post Office Box 92775, Lafayette, LA 70509**.
2. All requests must be submitted on attached form.
3. Allow at least two weeks for approval. **Do Not Wait Until Last Minute!**
4. All requests must have attached letter from Expert to the requesting Attorney, setting out with particularity the services contemplated and the estimate of fees that will be charged. (Request for investigator need not be accompanied by a letter from investigator)
5. Approval or Denial will be returned to you by fax.
6. If Denied and you are asked for additional information, a new request form must be submitted.

## Instructions for requesting payment of Expert Bills

1. All invoices are to be billed directly to Attorney.
2. Invoice must be itemized.
3. Invoice must have Defendant's Name and Docket Number for reference.
4. Invoice must have Expert's Tax ID number.
5. Attorney must review invoice for accuracy and the above items.
6. Attorney must sign and date the invoice indicating: Reviewed and Approved
7. Forward the original invoice with a copy of the approved expert request to **15<sup>th</sup> Judicial Public Defenders Office, Attn: Chris St. Julien, Post Office Box 3622, Lafayette, LA 70520**
8. Any invoice submitted for payment that is missing any of the above items will be returned to the Attorney.
9. No payments will be made to an Expert without an approved expert request. **NO EXCEPTIONS!**
10. **Any fees/expenses incurred in excess of the approval or without written approval is the liability of the Attorney. NO EXCEPTIONS!**

**15<sup>th</sup> Judicial District  
PUBLIC DEFENDERS OFFICE  
INVESTIGATOR/EXPERT REQUEST FORM**

**Attorney:** \_\_\_\_\_

**Defendant Name:**

**Parish:**

**Charge:**

**Docket #:**

**Court Dates:**

**Plea Status:**

**Facts of Case:**

**Type of Expert:**

**Name of Investigator/Expert:**

(Resume/CV if new expert/investigator)

**Anticipated Number of Hours Needed:**

**Anticipated Cost of Services:**

(Attach letter from expert)

**What issues should this investigator/expert consider?**

**What outcome do you anticipate?**

**Attorney signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\*\*\*\*\*

Amount Approved: \$ \_\_\_\_\_

Date Approved: \_\_\_\_\_

District Defender signature: \_\_\_\_\_

**Appendix U:**  
***Memorandum*, regarding Investigation,**  
**September 14, 2009**

**FIFTEENTH JUDICIAL DISTRICT  
PUBLIC DEFENDER OFFICE**

LAFAYETTE PARISH  
321 West Main Street, Suite 1-C  
Lafayette, Louisiana 70501

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Telephone: (337) 232-9345

September 14, 2009

**TO: ALL IDO ATTORNEYS**

**FROM: DAVID K. BALFOUR**

**RE: INVESTIGATION**

**PHASE 1:** Any potential client arrested for a serious felony will be interviewed within seventy two (72) hours of arrest by one of our contract investigators. The investigator will obtain as much preliminary information as possible with a subsequent follow up investigative goal in mind. This initial interview will be as thorough as the circumstances dictate. When and if the individual is assigned an attorney, the investigator will immediately arrange a meeting with that attorney to discuss his/her findings, so that a continuing investigative plan can be implemented. Following such a meeting, the attorney should submit a request for investigative assistance as set out below.

**PHASE 2 :** All attorneys will be allowed and encouraged to utilize up to five (5) hours of investigative assistance on any and all files assigned without the necessity of requesting such assistance. Thereafter, follow up requests as set out below should be submitted for approval.

**PHASE 3:** Follow up requests for investigative assistance will require only an estimate of the number of hours that will likely be necessary to complete the anticipated investigation.

**PHASE 4:** Upon the completion of the investigation, or every sixty (60) days, whichever comes first, the investigator will provide the assigned attorney a statement for services rendered to date. That statement will be a line item statement, listing first the date, followed by a brief description of the work undertaken on that date, followed by the dollar amount (\$55.00/hour) incurred in connection with that entry. Mileage or out of the ordinary expenses will be listed at the bottom of the statement, followed by a total amount requested by the investigator. This statement is to be sent to the trial attorney for review. After the trial attorney has reviewed and approved the statement for payment, such approval should be noted on the face of the statement and sent to Chris St. Julien for payment.

September 14, 2009

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If for some reason a trial attorney does not agree with an entry on the statement, obviously the attorney should contact the investigator to resolve any concerns. Barring unforeseen circumstances, all statements should be paid within thirty (30) days.

As has always been the case, I encourage each of you to use investigative services in connection with the defense of your clients. It is assumed that all serious felonies will automatically involve investigation, if only to determine the accuracy of the contentions of the State that can be the subject of independent investigation. The extent of ongoing investigation and/or, in certain circumstances, the need for investigation, is the sole determination of trial counsel. It should go without saying that anyone going into court who has not availed himself/herself of investigative services on behalf of his/her client may be deemed to have been ineffective.

Please remember, trial counsel has the ultimate authority as to how a planned defense is to be presented in court. Consequently, I urge each of you to actively participate in the investigative process. It is you who must determine what witnesses may be effective, how they are to be weaved into a defense and most importantly, it is you who must call and examine witnesses, not the investigator.

Attached is an updated listing of investigators that have been approved by the Office. If any of you have other investigators that you feel may be an asset to the attached list, do not hesitate to contact me with your suggestions.

END

**Investigator List**

Name	Name of Company	Address	Phone	Fax
James Miller		102 Triangle Circle, Lafayette, LA 70508	856-9760	
Frank K. McCardell, Jr.		109 Alonda Drive, Lafayette, LA 70503	989-2086	
Mac Wood	Black Horse Agency, LLC	P.O. Box 60279, Lafayette, LA 70506	235-1137	988-3432
Roy Givens	Superior Investigative Services	P.O. Box 5121, Lafayette, LA 70509	207-9411	261-0958
Russell Ancelet	Investigative Services of Laf	P.O. Box 3994, Lafayette, LA 70502	989-9486	989-0756
John Gabriel	P&M Investigations	P.O. Box 90741, Lafayette, LA 70509	593-8246	593-0098
Marcal Poullard	Encore Investigations			



**Appendix V:  
Chart of IDO attorney salaries &  
responsibilities, provided by IDO as of  
April 2010**







[illegible]

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The National Legal Aid & Defender Association (NLADA), founded in 1911, is the oldest and largest national, non-profit membership organization devoting all of its resources to advocating equal access to justice for all Americans. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal services and public defense services throughout the nation and provides a wide range of services and benefits to its individual and organizational members.

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[www.nlada.org](http://www.nlada.org)





1140 Connecticut Avenue, NW, Suite 900 | Washington, D.C. 20036  
Phone: (202) 452-0620 | Fax: (202) 872-1031  
[www.nlada.org](http://www.nlada.org)